LIBRARY
SUPREME COURT, U. S.

SEP 8 197

NO. 668

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO-CLC ..... Petitioner

vs.

GULF COAST BUILDING AND SUPPLY COMPANY, INC. ..... Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DIXON L. PYLES
BETTY B. TUCKER
PYLES & TUCKER
507 East Pearl Street
Jackson, Mississippi 39201
Attorneys for Petitioner

INDEX

	Page
Prayer	1
Opinions Below	1
Jurisdiction	2
Issues Presented For Review	2
Statutes Involved	2
Statement of the Case	2
Reasons for Granting the Writ	18
I. The Court of Appeals affirmance of the summary sua sponte exclusion by the district judge of a class of all union members from the petit jury panel during voir dire examination in a § 303 suit is violative of the declared policy and purposes of the Congress in the plain provisions of the Jury Selection And Service Act of 1968, Public Law 90-274, 28 USC §§ 1861-1869, 1871	18
II. The Court of Appeals affirmance of the district court's instructions to the jury that Local 480, in its dispute with a primary employer at a common construction site, was under a legal duty to seek out all employees and suppliers of secondary employers who refused to cross the union's picket line, which in all respects complied with the Moore Dry Dock Standards, and instruct such employees and suppliers to return to work and to cross the union's picket line in order to avoid violating 28 USC § 158(b) (4) (i) (ii) (B), and in order to escape liability in damages	

Page

pursuant to 29 USC § 187, was violative of the intent of the Congress to protect the union's traditional and permissible primary activity, as announced in 29 USC §§ 157 and 163; and the decision below is also in conflict with federal labor policy, decisions in other circuits, and with the principles clearly established by this Court in particular in *Denver Building and Construction Trades Council* and *International Rice Milling Company* 24

Conclusion 30

Appendix A—Statutes A1

Appendix B—Judgment of Court of Appeals A10

Appendix C—Opinion of United States Court of Appeals For the Fifth Circuit A11

Appendix D—Opinion of the United States District Court A22

Appendix E—Judgment of the United States District Court A27

AUTHORITIES CITED

Cases

Atlas Roofing Manufacturing Company v. Parnell, 5 Cir., 1969, 409 F2d 1191 22

Baltimore Building and Construction Trades Council and Local Union 16, International Association of Bridge, Structural and Ornamental Iron Workers Union AFL and John A. Piezonki, d/b/a Stover Steel Service, Case No. 5-CC-29, June 28, 1954, 108 NLRB 1575 26

Page

Brotherhood of Painters, Decorators and Paperhangers of America, Local Union No. 193, and District Council No. 38 of Brotherhood of Painters, Decorators and Paperhangers of America, affiliated with A.F. of L. and Pittsburg Plate Glass Company, Case No. 10-CC-62, October 25, 1954, 110 NLRB 455 27

City of Glendale v. Coquat, 52 P.2d, 1178, 1180, 46 Ariz. 478, 102 ALR 837 (1935) 23

Joyner v. Berman Leasing Company, 5 Cir., 1968, 388 F2d 875, 877 22

Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO v. NLRB et al, 366 US 667, 672 29

NLRB v. Denver Building & Construction Trades Council, 341 US 675, 687 27-28

NLRB v. International Rice Milling Company, 341 US 665, 671, 672 28

Sailors' Union of the Pacific, AFL (Moore Dry Dock Company) 92 NLRB 547 26

Schick v. United States, 195 US 65, 24 SCt 826, 49 LEd 99, 103 (1903) 23

Stewart v. Banks, 5 Cir., 1968, 397 F2d 798, 799 22

Thiel v. Southern Pacific Company, 32 US 217, 66 SCt 984, 90 LEd 1181, 1125 (1946) 24

STATUTES

	Page
Jury Selection and Service Act of 1968 (Public Law 90-274, 82 Stat. 54, 62, 28 USC §§ 1861-1871):	
Section 1861	19, 20, 21
Section 1862	19, 20, 21, 22, 23
Section 1863	20
Section 1863(b) (2)	20
Section 1863(b) (5)	20
Section 1865	20
Section 1869(h)	20
Section 1866(c)	21
Section 1867	21
National Labor Relations Act, as amended (29 USC §§ 157, et seq.):	
Section 157	25
Section 158(b) (4) (i) (ii) (B)	26
Section 163	25
Section 187	25

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO-CLC ..... Petitioner

vs.

GULF COAST BUILDING AND SUPPLY COMPANY, INC. ..... Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, entered in the above entitled case on June 19, 1970.

OPINIONS BELOW

The opinion of the District Court for the Southern District of Mississippi is reported as ..... F. Supp. ....., 71 LRRM 3212, 60 LC ¶ 10,330 and is reproduced as Appendix D. The opinion of the Court of Appeals for the Fifth Circuit, which is reprinted in Appendix B, is not yet officially reported, but is unofficially reported at 74 LRRM 2865, 63 LC ¶ 10,980.

JURISDICTION

The judgment of the Court of Appeals was entered on June 19, 1970. This petition was filed within ninety days of that date. Jurisdiction is conferred on this Court by 28 USC § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Whether the summary sua sponte exclusion by the district court judge of a class of all union members from the petit jury panel during voir dire examination in a § 303 suit is violative of the declared policy and purposes of the Congress in the plain provisions of the Jury Selection and Service Act of 1968, Public Law 90-274, 28 USC §§ 1861-1869, 1871.

2. Whether a labor union engaged in a dispute with a primary employer at a common construction site is under a legal duty to seek out all employees and suppliers of secondary employers who refuse to cross the union's picket line, which in all respects complied with the Moore Dry Dock Standards, and instruct such employees and suppliers to return to work and to cross the union's picket line, in order to avoid violating 28 USC § 158(b) (4) (i) (ii) (B), and in order to escape liability in damages pursuant to 29 USC § 187.

STATUTES INVOLVED

The pertinent portions of the Jury Selection and Service Act of 1968, Public Law 90-274, 82 Stat. 54, 57-62, 28 USC §§ 1861-1869, 1871; National Labor Relations Act, as amended, 29 USC §§ 157, 158(b)-(4) (i) (ii) (B) and 163, 187; are set out in Appendix A.

STATEMENT OF THE CASE

Gulf Coast Building and Supply Company, Inc., (Gulf Coast) filed its two count complaint against the In-

ternational Brotherhood of Electrical Workers, Local 480, AFL-CIO, (Local 480) on March 9, 1967 (A.1-4). The jurisdiction of the United States District Court was stated therein as 29 USC § 187. In the first cause of action, Gulf Coast charged that Local 480 since February 28, 1967, had engaged in, induced and encouraged individuals employed by persons engaged in commerce, to strike and refuse to perform services; threatened, coerced and restrained persons engaged in commerce all with an object of requiring (1) Gulf Coast to cease doing business with Gulf Electric Construction Company, Inc. (Gulf Electric); and (2) requiring Wood Mechanical Contractors (Wood), Delta Steel Company (Delta) and other employers to cease doing business with Gulf Coast; for which damages in the amount of $100,000 were demanded. In the second cause of action, Gulf Coast charged that Local 480, maliciously by use of force interfered with Gulf Coast's right to conduct its business of constructing the Tracetown Shopping Center in Natchez, Mississippi; and for which it demanded damages in the sum of $250,000.

On April 22, 1969, trial was begun in Vicksburg, Mississippi. The trial judge placed the whole venire in the jury box and began a voir dire examination of the petit jury members. During the course of his voir dire examination the trial judge suddenly demanded that every member of the panel who was a member of a trade union hold up his or her hand. Approximately six male members of the jury panel held up their hands. Without further examination of these members of the panel, and with no expression whatsoever from any members of this class of any nature, the trial judge, *sua sponte*, excused the entire class of union members. None of the excused group was a member of Local 480. No

explanation of his actions in excusing the entire class of union members was made at that time. The judge did not state that he believed the group as a whole or any individual thereof was not fully qualified or that any Jury Panel member may have been biased. When the union members filed out of the box and left the courtroom the judge continued and concluded his voir dire examination. He then permitted counsel for the plaintiff and defendant to conduct an abbreviated voir dire examination severely limiting the scope and range of such examination. On that date and at that time no opportunity for objection was afforded and no objection was made. However, Local 480 did object in its motion for a directed verdict and for a new trial on April 28, 1969. (A.201-204).

The evidence revealed that on February 8, 1967, John Erickson, Business Manager of International Brotherhood of Electrical Workers, Local 480, a building and construction craft union, received a letter from Leslie L. Flowers, a non union electrician, containing copies of his payroll checks from Gulf Electric Company (Gulf Electric) (A.403).[1] These checks revealed that Flowers was being paid at the rate of $3.50 an hour. The hourly rate at that time for journeymen electricians, members of IBEW Local 480, was $4.30 (A.403).

Upon investigation, Erickson found that Gulf Electric, whose principal place of business is Crestview, Florida, was the electrical subcontractor doing the rough-in masonry electrical work on the Tracetown Shopping Center (A.231; 234).

Tracetown was being constructed in Natchez, Mississippi, by the Gulf Coast Building and Supply Com-

[1] "A" refers to the appendix record in the Circuit Court of Appeals for the Fifth Circuit.

pany, Inc. (Gulf Coast), an Alabama corporation (A. 225). Gulf Coast was one of the owners as well as the General Contractor of Tracetown. Construction of Tracetown started in December, 1966, and Gulf Coast primarily used local labor furnished by the local trade unions (A.234).

On January 20, 1967, as Secretary-Treasurer of the Mississippi Building and Construction Trades Council, Erickson wrote to St. John, then Project Manager of Gulf Coast, stating that the State Council would like to work with the General Contractor on the project. Erickson stated that: "Your careful consideration of awarding sub-contracts to qualified contractors who abide by the State and Federal approved apprenticeship training program and pay the prevailing wage scales in the area would be appreciated."

Erickson found that Gulf Electric was not only paying substandard wages, but that the working conditions were also substandard. The electrical contractor was undermining the area wages and working conditions established by members of Local 480 through years of effort (A.403). He presented the findings of his investigation to the members of Local 480, and the membership voted to protest the substandard wages and working conditions of Gulf Electric at Tracetown (A. 404).

On February 28, 1967 (A.234) Local 480 placed a single picket (A.292) at the *only* entrance (A.291) to the *common* job site with a sign stating:

"No dispute with any other Employer. IBEW Local 480 protests substandard wages and conditions at Gulf Electrical Construction Company, Inc., electrical

contractor. No dispute with any other employer" (A.215, 290).

In order to prevent violence and any type of disorder from developing, the pickets were instructed to walk in a mannerly way, not to block traffic; not to keep anyone from going in or out; not tell anyone they could not go in; and to show the picket sign if questioned (A.443). At no time did the pickets ask *anyone* not to cross the picket line; nor did the pickets, or anyone connected with Local 480, ever ask *anyone* to *cease* doing business with any firm. The pickets remained on duty from 6:45 A.M. until 3:15 P.M. during the five-day work week (A.248). No objection to anyone crossing the picket line during this time was ever made. Only a single picket was ever on duty at any one time.

On March 1, 1967, Walter McCullough, an employee of Delta Steel Company, drove a truck loaded with steel to Tracetown. He was told by the picket that he could cross the picket line if he wanted to (A.322), but McCullough testified that he made the decision on *his own* not to cross the picket line. He called his boss in Jackson and was instructed by his superior not to cross the picket line. McCullough testified that no one induced or coerced him to prevent him crossing the picket line (A.327), that he made up his own mind of his own free will. McCullough was the only person who had any conversation with the pickets from February 28, 1967, to June 23, 1967.

Neither Local 480 nor any person acting for the Union made any contact with any employer or other labor organization during the period from December 1966 to June 23, 1967. Immediately prior to February 28, 1967, Erickson made a one sentence announcement to some business agents of Craft Unions at a morning

meeting of the Jackson Building and Construction Trades Council[2] that Local 480 was going to place an "area standards" picket on Gulf Electric at the Tracetown Project in Natchez.

On March 14, 1967 Gulf Coast constructed a second entrance (A.249, 250) approximately 300 yards south of the original gate. The new entrance was denominated "South Gate". A sign was erected at the South Gate reading:

> "South Gate. Gulf Electric Construction Company, Inc. This entrance reserved for employees of, and carriers of supplies making deliveries to, Gulf Electric Construction Company, Inc."

At the original entrance, now designated "North Gate", a sign was also placed, reading:

> "North Gate. This entrance is reserved for employees of, and carriers and suppliers making deliveries to . . . (names listed). Employees of carriers and suppliers making deliveries to Gulf Electric Construction Company prohibited from using this gate. Employees or carriers of supplies making deliveries to Gulf Electric Company must use South Gate."

There was an arrow pointing toward the South Gate. Upon the establishment of the South Gate, the picket moved from the former location to the new South Gate. While the South Gate was in existence, no picketing was conducted at the North Gate. In early June, Gulf Coast "demolished" the South Gate, leaving the original gate as the only remaining entrance into Tracetown. The pickets of Local 480 then returned to the North Gate.

---

[2] Jackson, Mississippi is 120 miles Northeast of Natchez.

Employees of Wood Mechanical Contractors and the employees of other contractors returned to work on March 15, 1967, and continued until the completion of the contracts (A.249-252).

On February 28, 1967, Robert Bruce Worley, assistant vice-president of Gulf Coast, testified that he had supper with his project manager in Natchez, and Erickson was pointed out to him in the restaurant (A.237). Worley said he introduced himself to Erickson and inquired as to the reason for the picket line. Erickson advised Worley that he had told the project manager the reason, it was also on the sign, and he would have his attorney contact Worley. St. John, the project manager, had used rather strong language toward Erickson earlier in the day.

Worley testified that on March 2, 1967, Pyles, Local 480 lawyer, and Mitchell, president of Gulf Coast, had a telephone conversation. Worley said that the lawyer explained to them that Local 480 had established working conditions and wages for a long time in this area and since Gulf Electric was undermining these, the union was protesting Gulf Electric's actions.[3]

Giving hearsay testimony, Worley said that on March 20, 1967, his project manager told him that an official of the concrete supplier had called him and said that "his people would not drive a truck across the picket line" (A.253). The record is completely devoid of any testimony connecting Local 480 in any way with the decision of the supplier and his employees not to deliver the concrete. Worley's testimony is as follows:

---

[3] In the early portion of the dispute, Erickson and Pyles believed that Mitchell was the executive officer of Gulf Electric Construction Company, Inc., as shown by the subpoena served to take his deposition in this case. (Record on Appeal; pp. 21, 22).

"Q. Did you check the job on March the 20th? A. Yes, sir, I did.

"Q. What did you find with respect to the job with respect to the concrete work? A. The concrete was scheduled to be placed early in the morning which is the usual procedure in concrete. I had arrived on the job in Natchez, had visited the job to make sure that the schedule was intact, that we were going to have concrete that day and then I left early in the morning to leave town for a short while. I came back later that day, approximately noon, and it was very apparent that we didn't have any trucks or anything pertaining to concrete or that looked like concrete on the job. I became very alarmed and immediately looked for the Project Manager and asked him why we didn't have concrete on the job. He told me that the supplier of the concrete called him and told him that his people would not drive a truck across the picket line." (A.252, 253)

Over repeated objections, Worley was allowed to testify in the presence of the jury to a series of meetings, conferences, and telephone calls with and between Clayton Spillman, business manager of the Laborers' Local Union 747 in Natchez, Ralph Brummett, business manager of the pipefitters Local Union in Jackson and president of the Jackson and State Building Trades Council, Louis Charles Von, project manager of Gulf Coast, Joe and James Wood, owners of Wood Mechanical, subcontractors and Fleming, president of Gulf Electric, and Mitchell. The meetings and conferences began on March 20 and continued through the night of March 22, 1967. The proposals, counter proposals and amend-

ed proposals discussed by this group concerned the replacing of the non-union electricians of Gulf Electric with union electricians from Local 480; the placing of non-union electricians on the payroll of Wood. No representative or agent of Local 480 was present at any of these meetings or had any part therein (A.253-280).

On cross examination Erickson was asked about a long distance telephone conversation with Brummett on March 20, 1967, and about a later telephone call from Brummett. His testimony was as follows:

"Q. Tell what about the telephone call that Mr. Brummett made to you that day. A. He called me at the Beechwood Restaurant in Vicksburg, Mississippi where I was at.

"Q. All right. Now, tell us what Mr. Brummett said to you? A. He wanted to know if they had a meeting down there if there was any way we could settle it and I told him it was if they would pay the wage scale and working conditions of our Local.

"Q. Did Mr. Brummett tell you he had made a proposal to Mr. Worley whereby Mr. Worley would put one or two of your men to work and you objected to that? A. I told him I would not put anybody out there to work . . .

"Q. Did Mr. Brummett ask you anything about letting the Foreman of Gulf Electric work on a permit from your union? A. Yes, he did. Q. What did you tell him? A. I told him all I wanted was the wage scale and the working conditions of our Local.

"Q. Did you authorize Mr. Brummett to go back and tell Mr. Worley and Mr. Spillman? A. No

sir, he asked me if I could be at a meeting that afternoon and I told him I could not. . . .

"Q. If Mr. Brummett said he was authorized to represent you, would he be right or wrong? A. He was wrong. . .

"Q. Now later that evening Mr. Brummett called you on the telephone and told you the people had all agreed to put all the men on Wood Mechanical payroll? A. He called me and said they had decided that they would put all the people on Wood's payroll and wanted to know if that was all right with me.

"Q. What did you tell him? A. I told him if they would pay the wage scale and the working conditions it was all right with me." (A.427-429)

Early on March 22, Worley telephoned Erickson and stated that Gulf Electric had worked out an arrangement to pay the union wage rate and adhere to the union working conditions. Relying in good faith on Worley's statement that wages and working conditions of Local 480 would be observed, Erickson ordered the picket removed (A.406).

At the union meeting on the night of March 22, Erickson reported to the membership that Worley had told him in the telephone conversation. After the meeting, Erickson received a telephone call which informed him that the plan instigated by Worley had not materialized as had been represented to Erickson by Worley. The Executive Committee of Local 480 ordered the picket line to again be placed on the project. (A. 406)

Erickson went to Natchez to the picket line at the South gate on the morning of March 23. Worley met

him there and invited him to the office. Present at this meeting also were Fleming and another official of Gulf Electric.

Worley and Fleming told Erickson that it had proved impossible for Wood and Gulf Electric to work out the agreement suggested by Worley. Fleming asked Erickson to suggest any other plan. Erickson replied that if Gulf Electric would pay the wage scale and live up to the working conditions of Local 480 that the dispute would be settled. He explained that he would not and could not refer Local 480 members to the job, because he had no member electricians available for assignment because of the unusual amount of construction work being done in the jurisdiction of Local 480 at that time. Worley and Fleming then had a discussion among themselves as to whether Gulf Coast would pay to Gulf Electric the difference in the labor costs which would result in the payment to Gulf Electric's employees of the Union wage rate. Worley was noncommittal, saying that before he would agree to pay the increased contract price, he would have to know the amount. Fleming and his fellow official stated that they would get in touch with their home office in Florida and give Worley an estimate during the day. Erickson stated that he wanted to talk to the Union's lawyer in order to secure a written agreement with Gulf Electric to pay the wages and observe the working conditions, and to include the settlement of the §303 damage suit in the settlement agreement. He left the meeting and attempted to contact his lawyer but found that the latter was out of the State and not available. Erickson returned to Worley's office to report on his efforts to contact his lawyer. Worley's secretary informed Erickson that Worley was in conference and could not be disturbed. Erickson

asked the secretary to tell Mr. Worley that he had not been able to contact his lawyer, and because of the lateness of the day, he was returning to Jackson. He never again heard from Worley. Gulf Electric did not pay its employees the area wage scale established by the union nor did the contractor live up to the working conditions of the Union (A.407-410).

Abner Cage, a black worker, was called as a witness for Gulf Coast, and testified that he was a member of Laborers Local 747 in Natchez (A.329). Some time before February 28, he was sent by the union to the Tracetown Project to work for Gulf Coast (A.329, 330). On February 28, he went to work and discovered that there was a picket line at the only entrance to the project. He had heard nothing of the dispute prior to that time (A.330). However, he did not cross the picket line at that time, and did not talk with the pickets nor did they say anything to him. The pickets in no way threatened or coerced him. The decision not to cross the picket line was his own (A.339, 340). Cage had no knowledge of Local 480, and at the time of the trial he did not know "for sure" what it was (A.340). He returned to work after about two weeks (A.331) driving through the North gate (A.331, 332, 340, 341). There was no picket line at the North gate (A.341), but he saw the picket line at the South gate. Over the objections of Local 480, Cage was permitted to testify that he was charged, tried and fined by Laborers' Local 747 for working behind the picket line.

Local 480 had no connection with the trial of Cage by Natchez Laborers Local 747, and objected to the prejudicial testimony being presented to the jury. In overruling the objection, the trial judge commented in the presence of the jury:

". . . I think everybody knows pretty generally that each one of these labor unions respect the rights and pickets of others and that's a perfectly natural consequence of anybody's picket there that any other labor union is going to respect that picket, so I'll overrule your objection. That's the reason we've got pickets. . . .

". . . and I'm admitting it for the purpose to show the effect it has on anybody having up a picket line on anybody belonging to a labor union, and you may have a continuing objection and your objection is overruled . . . .

"I don't believe there is any difference between objective and effect, that's a little bit too fine for me." (A.332-335)

In order to be sure that the Moore Dry Dock standards were met, Local 480 kept written records of persons going in and out of the South (Gulf Electric) gate (A.471). The record does not reveal that any person ever saw the pickets making the record, or that any one was influenced not to enter the project because of the record.

All witnesses testified that they crossed the picket line with no difficulty or interference (A.344, 345, 347, 348). At all times the picketing was conducted in an orderly peaceful manner, until it was voluntarily discontinued on June 23, 1967. From March 14, when the second gate was established, to June 23, as is known, no employers, other than the concrete suppliers, suppliers, or employees refused to go to work because of the picket line.

Gulf Coast completed the presentation of its evidence late in the afternoon of the first day. Local 480 re-

quested that it be allowed to make a motion for a directed verdict (A.400-401). The court refused to permit the motion at that time, stating he would give the union an opportunity to make its motion at a later time, and it was then required to begin the presentation of its case. After the first witness' testimony, the court announced it would hear the Union's motion. He overruled the motion stating:

". . . When a labor union puts up a banner they call, I don't believe it makes any difference what they put on that banner, *its* a labor union banner to be recognized by such, and I don't believe any labor union members would cross that picket line regardless of what's on that banner. You're not being very realistic when you're talking about having something on the banner you say that limited your fight you say to the Electric Company on the job, I doubt that one out of ten labor people would even read that, just see that *its* a banner and they know they are not going to cross it and they know they had better not cross it. I think you're a little naive to assume they are not sanctioning the company the crossing of those lines because labor people and everybody knows that they won't cross them. That's the reason you put your banners up there, you don't want them to cross it. . . ." (A.438-440)

The trial was completed in the afternoon of April 23, 1969. The court gave the jury instructions. Among several instructions given, to which exceptions were taken, Local 480 here specifically objected to three of the instructions requested by the plaintiff and as modified by the court were given to the jury. Instruction No. 1 read:

"Local 480 was under a duty to expressly instruct employees and suppliers of Gulf Coast Building and Supply Company, Inc., Wood Mechanical Contractors, and Natchez Sand and Gravel Company, that they were free to cross the picket line at Tracetown." (A.481, 504)

Instruction No. 2 was in the following language:

"Local 480 was under a duty to instruct employees of Gulf Coast Building and Supply Company who had ceased work, and who refused to cross their picket line as a result of Local 480's picketing, to return to work and cross such picket line without violating any duty to said labor Union." (A.481, 505)

Instruction No. 3 was given as:

"You are instructed as a matter of law that even though defendant's picketing was peaceful and even though its objective or purpose were lawful, still if an incidental, and inescapable, and undeniable purpose, result and effect of the method employed by the Union were to induce or force plaintiff's employees and suppliers not to cross the Union's picket line to serve plaintiff because of a labor dispute of the Union with one of plaintiff's subcontractors, Gulf Electric, then the defendant Union would be liable to the plaintiff in damages therefor." (A.481, 506)

The trial court refused to change any of the instructions despite the exceptions and objections of Local 480. In commenting on the instructions the Court said:

". . . it is not sufficient for a labor union to write on a banner that somebody is unfair and we are having a picket line here but say in any kind of language on that banner said we are not striking against anybody but the electrical Union and in effect you are

saying that you think that has exonerated you from responsibility for carrying a picket at all which has the very natural and everybody knows the inescapable ultimate effect of scaring a Union man to death. He won't cross that line and that's all there is to it. I don't believe that anything less than that an express instruction from a picket who was carrying such a sign as that would ever justify a Union man in crossing one of the lines and that's what I am trying to say. . ." (A.497)

". . . you see that colored fellow (Abner Cage) wasn't an electrical man, he wasn't working for any electrical contractor, and you see what happened to him and it will happen to any laborman and I think every labor union man knows that and they ought to be forthright enough to come in to Court and admit it instead of trying to dodge around and make somebody think that there is something real mystical about it because I don't think that. I have tried hundreds of these cases as an attorney and I have heard the same kind of testimony and I didn't believe it then and I don't believe it now. . . (A.498)

". . . I don't believe that when a picket carries a sign that that carries any kind of immunity with it for somebody who is say not working for the subcontractor that's in the dispute to cross that line and they simply won't do it and I don't believe that you could carry that sign without knowingly in advance and intentionally in advance doing exactly what it accompljshes. (A.499)

". . . The language of the statute is a little bit mild because I don't think anybody by any word of mouth has even sought or any manner tried in this case to induce or encourage but when you bring in the word

force there may be a different answer to that . . . (A.499)

"I don't know of any requirement of the act about anything that the Union is supposed to put on its banner. I think that is entirely up to them about what they put on their banner and I don't believe its necessary for them to put anything, if they carried something that looked like a banner on there, I think it would accomplish its purpose if they didn't have anything on it." (A.500)

The jury found for Gulf Coast and assessed its damages at $38,349.78 (A.198). The judgment of the Court was entered on April 28, 1969 (A.199, 200).

On April 28, 1969, Local 480 filed its motion for judgment in accordance with its motion for a directed verdict or for a new trial (A.201-204).

Among the grounds for the motion Local 480 complained that:

"15. The District Court erred in excusing for cause from the jury panel in this case, all persons who were members of any labor organizations."

The Court, on July 29, 1970, rendered an opinion and entered its order overruling the motion of Local 480 (A.214-219). The Union duly prosecuted an appeal.

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals affirmance of the summary sua sponte exclusion by the district judge of a class of all union members from the petit jury panel during voir dire examination in a § 303 suit is violative of the declared policy and purposes of the Congress in the plain provisions of the Jury

Selection and Service Act of 1968, Public Law 90-274, 28 USC §§ 1861-1869, 1871.

The actions of the trial judge and the opinion of the Court of Appeals conflict with the statutes which were effective but apparently were overlooked and ignored by the trial court and the Court of Appeals.

The Court of Appeals has decided the issue of the arbitrary exclusion of a class of all union members from the petit jury panel in a way which violates the intent, policy and purpose of the Congress in enacting the Jury Selection and Service Act of 1968 (28 USC §§ 1861-1869, 1871, as amended Mar. 27, 1968, Pub. L. 90-274, effective Dec. 22, 1968).

This case presents an important question in the administration of the Jury Selection and Service Act of 1968. The decision of the Court of Appeals, if allowed to stand, would sanction circumvention of the policy of the United States and the prohibition against discrimination, which are set out in plain and unequivocal language in §§ 1861 and 1862, as follows:

"§ 1861. Declaration of policy

"It is the policy of the United States that all litigants in Federal Courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that *all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States*, and shall have an obligation to serve as jurors when summoned for that purpose.

"§ 1862. Discrimination prohibited

"No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or *economic status.*" (Emphasis added).

The statutory plan for random jury selection (§ 1863) specifically provides that the source of the names of prospective jurors shall "foster" and "be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title" (§ 1863 (b) (2)); and that the plan shall "specify those groups of persons, or occupational classes whose members shall, on individual request therefor, be excused from jury service . . . only if the district court finds, and the plan states, that . . . excuse of members thereof would not be inconsistent with sections 1861 and 1862 of this title." (§ 1863(b) (5))

Section 1865 provides for a determination of the qualifications for jury service on a purely objective basis, "solely on the basis of information provided on the juror qualification form or other competent evidence." The juror qualification form shall request but not require information with respect to the areas in which discrimination is prohibited by § 1862. The form may request, but not require, the "occupation" of a potential juror and must clearly inform the person that the furnishing of any information with respect to "economic status or occupation" is not a prerequisite to his qualification for jury service. (§ 1869(h))

It is clear that the fundamental purpose of the 1968 Act is to assure non-discrimination in federal jury selection and service.

The statutory selection procedures were followed in this case, and a petit jury panel free of the prohibited discriminations appeared for the trial.

On voir dire examination the trial judge elicited the information that certain persons on the panel were members of labor unions and summarily excluded them from service on the jury and dismissed them forthwith, in violation of the policies declared and the rights secured by §§ 1861 and 1862, and contrary to the following express provision of § 1866(c):

> "(c) Except as provided in Section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5), (6), or (7) of section 1863(b) of this title, no person or *class of persons* shall be disqualified, excluded, excused, or exempt from service as jurors:" (Emphasis added.)

The discretionary authority of a district judge under prior law to exclude any class or group of persons (28 USC, former § 1863(b)) has not only been eliminated, but is expressly prohibited in the 1968 Act.

A new provision in the 1968 Act (§ 1867) establishes the procedure to be followed in both criminal and civil cases to challenge a grand or petit jury on the ground that it was not selected in conformity with the provisions of the Act. However, the Act leaves open the right to seek "vindication or enforcement" of laws prohibiting discrimination in the selection of juries in the specific areas set out in § 1862. Section 1867(e) reads in relevant part, as follows:

> "(e) . . . *Nothing in this section shall preclude any person* or the United States *from pursuing any other remedy*, civil or criminal, *which may be available for the vindication or enforcement of any law prohibiting*

discrimination on account of race, color, religion, sex, national origin, or *economic status* in the selection of persons for service on grand or petit juries." (Emphasis added.)

Petitioner sought the "vindication or enforcement" of § 1862 of the Act in its motion for a judgment notwithstanding the verdict or a new trial and on the appeal to the Court of Appeals. The Court of Appeals held that petitioner waived its right to object to the composition of the panel by standing silently by while members of labor organizations were "systematically excluded" from the jury panel. This is not a case of "systematic exclusion", but an unprecedented summary action of the district judge on his voir dire examination of the panel.

The Court of Appeals sought to support its opinion by reference to three of its own decisions decided under former and different statutes and involving different situations.

In *Joyner v. Berman Leasing Company*, 5 Cir., 1968, 388 F2d 875, 877, a challenge to the entire jury panel, on the ground that the prospective jurors were not chosen in accordance with federal law as defined by recent case authorities, was made orally after trial.

In *Stewart v. Banks*, 5 Cir., 1968, 397 F2d 798, 799, appellants asserted as error the systematic exclusion of Negroes from the jury panel, an issue which was not raised until their motion for a new trial.

In *Atlas Roofing Manufacturing Company v. Parnell*, 5 Cir., 1969, 409 F2d 1191, the statutory disqualification of one juror by reason of a previous conviction of a felony was not raised by appellants until after verdict. The Court of Appeals held that this was ground for

challenge by the defendant for cause, and if not seasonably exercised, the objection is waived.

The objection in this case was not a challenge to the entire jury panel nor to the statutory disqualification of a juror. It was a protest of the illegal action of the trial judge in practicing the discrimination prohibited by § 1862 by excluding a class of persons on the basis of their economic status.

The decisions relied upon by the Court of Appeals are of no aid, either as to fact or law, in the determination of the jury issue raised in this case.

The exclusion of all members of labor organizations was made by the District Judge on his own voir dire examination, and was discriminatory per se. The Act is broad as to the right to pursue any available remedy for the vindication or enforcement of any law prohibiting such discrimination, but silent in fixing a time in which action must be taken. To hold that the right is lost if not exercised before the trial commences, as the Court of Appeals held, would circumvent the policy and purpose of the Congress as expressed in the Act.

The Court of Appeals held that the petitioner waived its rights to object to the discriminatory action of the district judge. In *Schick v. United States*, 195 US 65, 24 S Ct 826, 49 LEd 99, 103 (1903), this Court held:

> "When there is *no constitutional or statutory mandate*, and *no public policy prohibiting*, an accused may waive any privilege which he is given the right to enjoy." (Emphasis added.)

This principle is stated affirmatively in *City of Glendale v. Coquat*, 52 P.2d 1178, 1180, 46 Ariz. 478, 102 A.L.R. 837 (1935) as follows:

"It is apparently universally held that where a right has been given to an individual not alone for his private benefit, *but as a matter of public policy*, in the interest of the state, *it may not be waived by anyone*." (Emphasis added.)

The prohibition of the statute against discrimination on account of economic status reflect the decision of this court in the civil case of *Thiel v. Southern Pacific Company*, 32 US 217, 66 S Ct 984, 90 LEd 1181, 1125 (1946) and the implementation by Congress of the principle stated therein as follows:

> Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an *individual* rather than a *group* or *class matter*. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. (Emphasis added.)

Through many years of court decisions followed by congressional acts the federal jury system has developed, with the result that in the 1968 Act the congressional purpose is disclosed fully, firmly and comprehensively. The policy of the United States is declared. Discrimination in specified areas is prohibited. Arbitrary exclusion of any class of persons is prohibited.

The opinion and judgment of the Court of Appeals is in conflict with and circumvention of the Jury Selection Act of 1968.

II. The Court of Appeals affirmance of the district court's instructions to the jury that Local 480, in its dispute with a primary employer at a common construction site, was under a legal duty to

seek out all employees and suppliers of secondary employers who refused to cross the union's picket line, which in all respects complied with Moore Dry Dock Standards, and instruct such employees and suppliers to return to work and to cross the union's picket line in order to avoid violating 29 USC § 158(b) (4) (i) (ii) (B) and in order to escape liability in damages pursuant to 29 USC § 187, was violative of the intent of the Congress to protect the union's traditional and permissible primary activity as announced in 29 USC §§ 157, and 163; and the decision below is also in conflict with federal labor policy, decisions in other circuits, and with the principles clearly established by this Court in particular in *Denver Building and Construction Trades Council* and *International Rice Milling Company.*

This case is one in which the instructions given to the jury by the trial judge violate the intent of Congress in enacting 29 USC §§ 157 and 163 and outlaw that conduct which is traditional and permissible in a primary action.

The Court of Appeals followed the reasoning of the trial judge that when a union puts up a "banner" it doesn't make any difference what legend is written on the sign, it is recognized as a barrier to union men who are going to refuse to cross the picket line (A.438-440). The union expects and hopes that most, if not all, union members will refuse to cross the picket line. Such being the case, both the district court and the Court of Appeals concluded it was therefore incumbent upon Local 480 to take affirmative action to negative the inducement which the mere existence of the picket line engendered. The district court instructed the jury that

Local 480 was under a legal duty to expressly seek out the employees and suppliers of the other employers who had contracts on the Tracetown project and who had refused to cross the picket line, which was peaceful and admittedly complied in all respects with the Moore Dry Dock Standards,[4] and to instruct such employees to return to work on the project and to instruct the suppliers to cross the picket line. The jury was instructed that if they found that Local 480 had failed to take this affirmative action then the jury was to find that the union had violated § 8(b) (4) (i) (ii) (B) of the NLRA as amended, and it was therefore liable in damages to Gulf Electric for its failure to seek out and instruct the employees to come to work and the suppliers to come on across the picket line and make their deliveries.

The NLRB has refused to follow the rule adopted by the Court of Appeals. In *Baltimore Building and Construction Trades Council and Local Union* 16, *International Association of Bridge, Structural and Ornamental Iron Workers Union AFL and John A. Piezonki, d/b/a Stover Steel Service*, Case No. 5-CC-29, June 28, 1954, 108 NLRB 1575 the Board said:

> ". . . The pickets conducted themselves strictly in accordance with their instructions. They made no attempt physically to bar the entry of employees into the project, nor did they accost or attempt to persuade employees not to enter or not to work. So far as is shown by the evidence, 1 or 2 pickets at each project simply patrolled the entrances, handed out authorization cards when requested, and answered inquiries by stating that the Council was conducting an

[4] *Sailors' Union of the Pacific, AFL* (Moore Dry Dock Company) 92 NLRB 547.

organizing campaign. The effect of the picketing was that most of the already unionized employees on the projects being picketed refused to cross the picket lines.

"The Trial Examiner found that the picketing violated Section 8 (b) (4) (A) of the Act. He reasoned that, although the Respondents did not call for such action by way of instructions, pickets, or picket signs, they expected that many union members would refuse to cross the picket line and it was therefore 'incumbent upon them to take affirmative action to negative the inducement which the mere existence of the picket line constituted, by ordering the men back to work.' We do not agree with this reasoning of the Trial Examiner. Logically applied, it would outlaw substantially all primary picketing. Yet the legislative history of Section 8 (b) (4) (A) is clear that by that section Congress intended to make unlawful only secondary boycotts and secondary strike activities and not conduct 'which was traditional and permissible in a primary action.' "

The Board reiterated this rule in *Brotherhood of Painters, Decorators and Paperhangers of America, Local Union No. 193, and District Council No. 38 of Brotherhood of Painters, Decorators and Paperhangers of America, affiliated with A.F. of L. and Pittsburg Plate Glass Company*, Case No. 10-CC-62, October 25, 1954, 110 NLRB 455.

The decision of the Court of Appeals conflicts with the rule established by the NLRB.

The result reached by the Court of Appeals in this case is in conflict with the principles clearly established by this court in *NLRB v. Denver Building & Construction*

Trades Council, 341 US 675, 687, and in *NLRB v. International Rice Milling Company*, 341 US 665, 671, 672. In Denver the court said:

"At the same time that §§ 7 and 13 safeguard collective bargaining, concerted activities and strikes between the primary parties to a labor dispute, § 8(b) (4) restricts a labor organization and its agents in the use of economic pressure where an object of it is to force an employer or other person to boycott someone else.

"A. We must first determine whether the strike in this case had a proscribed object. The conduct which the Board here condemned is readily distinguishable from that which it declined to condemn in the Rice Milling Case, ante, p. 1277. There the accused union sought merely to obtain its own recognition by the operator of a mill, and the union's pickets near the mill sought to influence two employees of a customer of the mill not to cross the picket line. In that case we supported the Board in its conclusion that such conduct was no more than was traditional and permissible in a primary strike. The union did not engage in a strike against the customer. It did not encourage concerted action by the customer's employees to force the customer to boycott the mill. It did not commit any unfair labor practice proscribed by § 8(b) (4)."

The decision of the Court of Appeals in affirming the action of the district court judge in his comments in the presence of the jury to the effect that every one knew that each of the labor unions respect the picket lines of the others and that there was no difference between objective and effect and the instructions to the jury that Local 480 had to instruct employees and sup-

pliers of secondary employers to cross the picket line, was also in conflict with the principles announced in *Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO, v. NLRB et al*, 366 US 667, 672 wherein this court said:

> "Thus the section 'left a striking labor organization free to use persuasion, including picketing, not only on the primary employer and his employees but on numerous others . . .'
>
> "Important as is the distinction between legitimate 'primary activity' and banned 'secondary activity,' it does not present a glaringly bright line. The objectives of any picketing include a desire to influence others from withholding from the employer their services or trade. See Sailors' Union of the Pacific (Moore Dry Dock), 92 NLRB 547. '[I]ntended or not, sought for or not, aimed for or not, employees of neutral employers do take action sympathetic with strikers and do put pressure on their own employers.' Seafarers International Union v. NLRB, 105 App DC 211, 265 F2d 585, 590. 'It is clear that, when a union pickets an employer with whom it has a dispute it hopes, even if it does not intend, that all persons will honor the picket line, and that hope encompasses the employees of neutral employers who may in the course of their employment (deliverymen and the like) have to enter the premises.' Id. 265 F2d at 591. 'Almost all picketing, even at the situs of the primary employer and surely at that of the secondary, hopes to achieve the forbidden objective, whatever other motives there may be and however small the chances of success.' Local 294, supra (284 F2d at 890). But picketing which induces secondary employees to respect a picket line is not the equivalent of picketing

which has an object of inducing those employees to engage in concerted conduct against their employer in order to force him to refuse to deal with the struck employer. NLRB v. International Rice Milling Co. 341 US 665, 95 Led 1277, 71 S Ct 961, supra."

CONCLUSION

For the reasons set forth herein, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals for the Fifth Circuit.

Respectfully submitted

DIXON L. PYLES
BETTY B. TUCKER
PYLES & TUCKER
507 East Pearl Street
Jackson, Mississippi 39201
Attorneys for Petitioner

APPENDIX A

STATUTORY PROVISIONS INVOLVED

28 USC §§ 1861-1869 in relevant part are as follows:

Amendments by Pub.L. 90-274 (1968)

Section 101 *of Public Law* 90-274, *approved March* 27, 1968, *entitled "An Act to provide improved judicial machinery for the selection of Federal juries, and for other purposes", amended the caption, analysis, and sections* 1861 *through* 1869 *of chapter* 121 *of Title* 28, *United States Code, to read as set out herein.*

Section 102 *of Public Law* 90-274 *amended sections* 1821 *and* 1871 *of Title* 28, *United States Code.*

Section 103 *of Public Law* 90-274, *repealed certain sections of the District of Columbia Code, and amended various sections pertaining to the District of Columbia, Puerto Rico, and the Canal Zone.*

Section 104 *of Public Law* 90-274, *provided: "This Act shall become effective two hundred and seventy days after the date of enactment* [*December* 22, 1968]: *Provided, That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."*

§ 1861. Declaration of policy

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States.

and shall have an obligation to serve as jurors when summoned for that purpose.

As amended Sept. 9, 1957, Pub.L. 85-315, Part V, § 152, 71 Stat. 638; March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

§ 1862. Discrimination prohibited

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

As amended March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

§ 1863. Plan for random jury selection

(b) Among other things, such plan shall—

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title. The plan for the District of Columbia may require the names of prospective jurors to be selected from the city directory rather than from voter lists. The plans for the districts of Puerto Rico and the Canal Zone may prescribe some other source or sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title.

(5) specify those groups of persons or occupational classes whose members shall, on individual request

therefor, be excused from jury service. Such groups or classes shall be excused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and excuse of members thereof would not be inconsistent with sections 1861 and 1862 of this title.

(6) specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt. Such groups or classes shall be exempt only if the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title. The plan shall provide for exemption of the following persons: (i) members in active service in the Armed Forces of the United States; (ii) members of the fire or police departments of any State, district, territory, possession, or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

(7) fix the distance, either in miles or in travel time, from each place of holding court beyond which prospective jurors residing shall, on individual request therefor, be excused from jury service on the ground of undue hardship in traveling to the place where court is held.

As amended March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

§ 1865. Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

(1) is not a citizen of the United States twenty-one years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil

rights have not been restored by pardon or amnesty. As amended March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

§ 1866. Selection and summoning of jury panels

(c) Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5), (6), or (7) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: . . . .

As amended May 24, 1949, c. 139, § 96, 63 Stat. 103; March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

§ 1867. Challenging compliance with selection procedures

(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(b) In criminal cases, before the voir dire examination begins, or within seven days after the Attorney General of the United States discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the Attorney General may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(c) In civil cases, before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, any party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury.

(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting a grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(e) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime, the Attorney General of the United States or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or crimi-

nal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.

As amended Sept. 2, 1957, Pub.L. 85-259, 71 Stat. 583; March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

§ 1869. Definitions

For purposes of this chapter—

(h) "juror qualification form" shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The form shall request, but not require, the race and occupation of a potential juror and any other matter not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form also shall elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall

not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his race, color, religion, national origin, economic status, or occupation is not a prerequisite to his qualification for jury service, and that such information need not be furnished if the person finds it objectionable to do so;

As amended Oct. 16, 1963, Pub.L. 88-139, § 2, 77 Stat. 248; March 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 53.

29 USC §§ 157, 158(b) (4) (i) (ii) (B) and 163 are as follows:

"§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, *to bargain collectively* through representatives of their own choosing, and *to engage in other concerted activities for the purpose of collective bargaining* or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title. July 5, 1935, c. 372, § 7, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 140.

"§ 158

(b). It shall be an unfair labor practice for a labor organization or its agents—

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce *to engage in, a strike or a refusal in the course* of his

employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) *to threaten, coerce, or restrain any person engaged in commerce or in an industry* affecting commerce, where in either case an *object thereof* is—

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, *or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section* 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any *primary strike or primary picketing;* . . .

"§ 163. Right to strike preserved

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. July 5, 1935, c. 372, § 13, 49 Stat. 457; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 151."

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

October Term, 1969

No. 28530

D. C. Docket No. CA 1285

GULF COAST BUILDING & SUPPLY COMPANY, INC., Plaintiff-Appellee,

versus

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 480, AFL-CIO, Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Mississippi.

Before BELL, COLEMAN and AINSWORTH, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause, be and the same is hereby, affirmed.

It is further ordered that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

Issued as Mandate: June 19, 1970

APPENDIX C

In The

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 28530

GULF COAST BUILDING & SUPPLY COMPANY, INC., Plaintiff-Appellee,

versus

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 480, AFL-CIO, Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Mississippi

---

(June 19, 1970)

Before BELL, COLEMAN and AINSWORTH, Circuit Judges.

AINSWORTH, Circuit Judge: Gulf Coast Building & Supply Company, Inc. (Gulf Coast) commenced this action under section 303 of the Labor Management Relations Act, 29 U.S.C. § 187, to recover damages from International Brotherhood of Electrical Workers, Local No. 480, AFL-CIO (Local 480). Gulf Coast was engaged as the general contractor for the construction of a shopping center. In this action it complained of the damages sustained by it as a result of picketing at the jobsite by Local 480. Gulf Coast alleged that the picketing violated the secondary-boycott section of

the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(i) and (ii)(B), because its object was to force Gulf Coast to sever its contract with a nonunion electrical subcontractor and hire a union subcontractor instead. The jury returned a general verdict in favor of Gulf Coast in the amount of $38,349.78. The District Judge denied Local 480's motion for a judgment notwithstanding the verdict or a new trial, and the union appeals. Local 480 contends that the evidence does not support the jury's finding that it engaged in a secondary boycott or the jury's award of damages to Gulf Coast. Also, it argues that the jury was improperly constituted and that the District Court's jury instructions were erroneous. We affirm.

Gulf Coast, as general contractor, began construction of the Tracetown Shopping Center (Tracetown Center) in Natchez, Mississippi, in December 1966. On January 20, 1967, Erickson, the Business Manager of Local 480, wrote a letter to St. John, the Project Manager of Gulf Coast at the Tracetown Center site, stating that Local 480 would appreciate Gulf Coast's "careful consideration of awarding subcontractors to qualified contractors who abide by the State and Federal approved apprenticeship training program and pay the prevailing wage scale in this area [Natchez]." A list of "electrical contractors who have agreements with Local 480" was enclosed. Gulf Coast awarded the plumbing work to Wood Mechanical of Jackson, Mississippi, and the electrical work to Gulf Electric Construction Company (Gulf Electric) of Crestview, Florida. Gulf Electric was not a union employer, having no agreement with Local 480. At the Tracetown Center site Gulf Coast employed mechanics and laborers from the Natchez area. Some of these employees were obtained

through the Carpenter's Local, the Masonry Local, and the Laborer's Local.

On February 28, 1967, Local 480 began picketing the single entrance gate to the construction site. The union claimed that its dispute was solely with Gulf Electric, the dispute being that Gulf Electric did not pay area wage scales or follow area working standards adhered to by union electrical employers, thus undermining those scales and standards. According to the union, the sole purpose of the picketing was to pressure Gulf Electric into meeting the area scales and standards. Local 480, however, did not contact Gulf Electric before the picketing began. The pickets carried signs consistent with the union's avowed purpose of picketing at the Tracetown Center site. The pickets were instructed not to say anything to persons inquiring about the picket line, but to have them read the signs.

Before establishing the picket line, Erickson informed several local unions affiliated with the Building Trades Council that Local 480 was going to picket at the Tracetown Center. Erickson knew that it was the general policy of unions affiliated with the Council not to cross picket lines, and he hoped that their members would not cross Local 480's line. Local 480 commenced picketing in the mornings before Gulf Coast people were due to arrive so that they would recognize the line and stay off the job.

On February 28, the day picketing began, Gulf Coast's Project Manager questioned Erickson about the cause of the picketing. Erickson, mentioned the letter he had written on January 20, told the Project Manager to read the picket sign. On the same day, Worley, a vice president of Gulf Coast, met Erickson by chance and asked him why Local 480 was picketing. Erickson

replied that he had told the Project Manager to read the sign, that he did not want to discuss the matter with Worley, and that his lawyer would contact Worley. Later, Erickson's lawyer informed Worley and the president of Gulf Coast that "you people are undermining us and we're protesting."

The picketing lasted, with one short break, until June 23, 1967, when it was voluntarily stopped. Until March 14, the pickets patrolled at the single entrance to the construction site. On that date Gulf Coast constructed a second entrance for use by everyone but Gulf Electric and persons doing business with Gulf Electric, who continued to use the original gate. Local 480 kept an account of persons using the new gate, and the pickets continued to patrol the original gate, which was eliminated in June. During the course of the picketing, some employees of Gulf Coast and of subcontractors other than Gulf Electric, as well as persons delivering supplies to the site, refused to cross the picket line.

The break in picketing occurred after Worley, on the morning of March 22, informed Erickson of a proposal to have Wood Mechanical, a union employer, employ the electrical labor. At Worley's request, Erickson removed the line. The proposal was not effected, however, and the picketing resumed on March 23. Also on March 23, at a meeting arranged by Worley among himself, Erickson, and a representative of Gulf Electric, Gulf Coast and Gulf Electric offered to arrange the payment of Local 480's prevailing wage scale and compliance with the prevailing working standards. Erickson stated that he would have to discuss the matter with his lawyer. He was not heard from again.

The picket line had these effects on Gulf Coast's operations at the Tracetown Center site: The job was shut

down from February 28 through March 2, except for electrical work being performed by Gulf Electric. Gulf Coast was unable to obtain local replacements. It did obtain masons from New Orleans, Mobile, and Pensacola, but no plumbers, except for the owners of Wood Mechanical, reported to work from February 28 until March 15. Gulf Coast rented equipment to batch concrete, but, except for deliveries made on March 22, concrete was not delivered to the site until March 31. In addition, Gulf Coast added further direct supervision, assigned administrative personnel, took over the work of subcontractors, rented additional equipment, and worked overtime to make up for the time lost because of the picketing. As a result of the lack of progress made toward completion of the shopping center, the construction lender refused to disburse loan funds until Gulf Coast obtained a completion bond, which cost $10,750. Gulf Coast incurred and paid attorney's fees and expenses amounting to $4,750.85 to effect resumption of work and employed guards for the protection of its property and equipment at the jobsite. Gulf Coast's accountant, under the supervision and with the assistance of Worley and Gulf Coast's president, prepared a schedule of some of the expenses incurred by Gulf Coast in attempting to overcome the effects of the picketing. The contract price for construction of Tracetown Center was $1,250,000. The actual cost of construction was $1,296,000, or $46,000 more. Most of the shopping center was completed by September 1, 1967, the scheduled completion date. This lawsuit followed.

We conclude that the judgment of the District Court must be affirmed. There is sufficient evidence in the record to support the jury's finding that Local 480's actions amounted to a secondary boycott in violation

of National Labor Relations Act § 8(b)(4)(i) and (ii)(B), 29 U.S.C. § 158(b)(4)(i) and (ii)(B). *See International Bro. of Elec. Wkrs., Local* 480 *v. N.L.R.B.*, D. C. Cir., 1969, 413 F. 2d 1085, *enforcing* 172 N.L.R.B. No. 64 (June 26, 1968). There is also ample evidence to support the jury's award of damages. *See Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U. S. 555, 51 S. Ct. 248 (1931); *Sheet Metal Wkrs. Int. Ass'n. Loc. 223 v. Atlas Sheet Metal Co.*, 5 Cir., 1967, 384 F. 2d 101. Local 480 has complained too late about the composition of the jury. *E. g., Stewart v. Banks*, 5 Cir., 1968, 397 F. 2d 798. Finally, we are satisfied that the District Court's instructions to the jury did not confuse or mislead it regarding principles of law applicable to this case. *Cf. Delancey v. Motichek Towing Service, Inc.*, 5 Cir., 1970, ... F. 2d ..... [No. 27401, June 1].

I.

If Local 480's sole object was to force Gulf Electric to pay area standards, and its actions were not intended to pressure neutral employers such as Gulf Coast to cease doing business with Gulf Electric and were reasonably limited to accomplish its primary object, then Local 480's actions did not constitute a secondary boycott. If, however, Local 480 did have the purpose of forcing Gulf Coast to sever its ties with Gulf Electric, and its picketing was designed to accomplish that purpose, its actions amounted to a secondary boycott in violation of National Labor Relations Act § 8(b)(4)(i) and (ii)(B), 29 U.S.C. § 158(b)(4)(i) and (ii)(B), and it may be held liable to Gulf Coast. Labor Management Relations Act § 303, 29 U.S.C. § 187. *See International Bro. of Elec. Wkrs., Local* 480 *v. N.L.R.B.*, D. C. Cir., 1969, 413 F. 2d 1085, 1087.

In Sailors' Union of the Pacific [Moore Drydock], 92 N.L.R.B. 547 (1950), the Labor Board established guidelines for picketing one subcontractor at a common construction site. Four standards for picketing in common suits situations would be considered presumptive of valid primary activity:

> ". . . (1) that the picketing be limited to times when the situs of dispute was located on the secondary premises, (2) that the primary employer be engaged in his normal business at the situs, (3) that the picketing take place reasonably close to the situs, and (4) that the picketing clearly disclose that the dispute was only with the primary employer. These tests were widely accepted by reviewing federal courts. . . ."

Local 761, *Inter. U. of E., R. & M. Wkrs. v. N.L.R.B.* [*General Electric*], 366 U.S. 667, 677, 81 S. Ct. 1285, 1291 (1961). In this case, Gulf Electric, the primary employer, was engaged in its normal business on the premises of Gulf Coast, the secondary employer. The picketing was limited to the single gate used by Gulf Electric and persons doing business with Gulf Electric. The picket signs stated clearly that the dispute was only with Gulf Electric. Thus the *Moore Drydock* guidelines were followed by Local 480. Formal compliance with these guidelines, however, does not mean that picketing with a secondary object can be done lawfully, for there remains for the trier of fact in section 303 cases, as for the Labor Board in unfair union labor practice cases, the determination whether picketing has gone beyond the union's avowed primary purpose. *See, e. g., International Bro. of Elec. Wkrs., Local* 480 *v. N.L.R.B.*, D. C. Cir., 1969, 413 F. 2d 1085, 1089; *N.L.R.B. v. Northern Cal. Dist. Coun. of Hod Carriers, etc.*, 9 Cir., 1968, 389 F. 2d 721, 725.

Determining the legality of the very union practices in issue here, the Labor Board found, on June 26, 1968, that Local 480's picketing at the Tracetown Center site went beyond the union's avowed primary purpose and was aimed at Gulf Coast, with the object of forcing Gulf Coast to replace Gulf Electric as the electrical subcontractor. 172 N.L.R.B. No. 64. On April 16, 1969, the District of Columbia Circuit ordered enforcement of the Labor Board's order. *International Bro. of Elec. Wkrs., Local* 480 *v. N.L.R.B.*, D. C. Cir., 1969, 413 F. 2d 1085. The Court stated:

> "The Board concluded that the union's equivocal responses to offers aimed at meeting the union's demand for area standards, plus the union's clear and quick response to the suggestion that Gulf Electric be replaced by a union employer, indicated that the union's picketing was aimed at Gulf Coast, with the object of forcing Gulf Coast to replace Gulf Electric. The Board took the position . . . that when such an object can be shown in a common situs picketing situation, a violation of the Act is made out despite the union's formal compliance with the *Moore Drydock* guidelines. We agree."

Id. at 1088-1089.

We have carefully reviewed the extensive record in this case. For the reasons found persuasive by the District of Columbia Circuit, we conclude that the jury was warranted, after viewing the dispute at first hand, in finding that Local 480 committed a secondary boycott, thus subjecting itself to liability to the secondary employer, Gulf Coast.

II.

Section 303 of the Labor Management Relations Act, 29 U.S.C. § 187, permits any person injured in his business or property as a result of a secondary boycott to bring an action to recover the damages he has sustained, plus the costs of the suit. The statute is compensatory in nature, *Local 20, Teamsters, etc., Union v. Morton*, 377 U. S. 252, 84 S. Ct. 1253 (1964), and damages may be recovered only for actual losses sustained as a result of the unlawful secondary activity. *Sheet Metal Wkrs. Int. Ass'n, Loc. 223 v. Atlas Sheet Metal Co.*, 5 Cir., 1967, 384 F. 2d 101, 109. Although the employer must prove that he has suffered some injury to his business or property, he need not detail the exact amount of damages suffered; it will suffice if the evidence shows the extent of damages as a matter of just and reasonable inference, although the result may be only approximate. *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U. S. 555, 51 S. Ct. 248 (1931); *International U. of Op. Eng., Local 653 v. Bay City Exec. Co.*, 5 Cir., 1962, 300 F. 2d 270, 272.

In this case we are of the opinion that the District Judge did not abuse his discretion by allowing the jury's award of damages to stand over Local 480's motion for a judgment notwithstanding the verdict or a new trial. The summaries prepared by Gulf Coast's accountant and other evidence sufficiently showed the probable amount of damages sustained by Gulf Coast to warrant the jury's finding that $38,349.78 was the extent of those damages, as a matter of just and reasonable inference.

III.

Local 480 argues that the District Court erred in excusing for cause from the jury panel all persons who

were members of any labor organization. This objection to the composition of the jury panel was first made in the union's motion for a judgment notwithstanding the verdict or a new trial. Such a post-trial allegation, standing alone, does not constitute evidence reviewable by this Court. *Joynor v. Berman Leasing Company*, 5 Cir., 1968, 398 F. 2d 875, 877. Moreover, we have held that a party to a civil action waives his right to object to the composition of the panel when he fails to make his objection before the trial commences. *Stewart v. Banks*, 5 Cir., 1968, 397 F. 2d 798, 799. We reasoned in Stewart that

> "[i]f a civil litigant is permitted to go to trial and ascertain the verdict of the jury, and if the verdict be adverse to his position, then for the first time raise some question concerning the manner in which the jury lists in the Court are composed, and if it should be determined that there was some imperfection in the jury lists, this would mean that the litigant, by deliberately failing to make timely objection had had two opportunities to have his case presented to a jury."

Id. *See also Atlas Roofing Manufacturing Company v. Parnell*, 5 Cir. 1969, 409 F. 2d 1191. This reasoning is especially applicable to this case, in which a union local informs us that it stood silently by while members of labor organizations were "systematically excluded" from the jury panel. Local 480 may properly be held to have waived its rights under the circumstances.

IV.

Local 480's objections to the District Judge's charge to the jury must be rejected. In reviewing the claim of

an alleged infirm instruction, we are guided by the general rule that the charge

> "'. . . should be taken as a whole and read in its entirety; that is, each instruction must be considered in connection with others of the series referring to the same subject and connected therewith, and if, when taken together, they properly express the law as applicable to the particular case, there is no just ground of complaint, even though an isolated and detached clause is in itself inaccurate, ambiguous, incomplete or otherwise subject to criticism.'"

Delancey v. Motichek Towing Service, Inc., 5 Cir., 1970, ___ F. 2d ___ [No. 27401, June 1], *citing Nolan v. Greene*, 6 Cir., 1967, 383 F. 2d 814, 816. Our function is to satisfy ourselves that the instructions, viewed with "orbitary and universal" scrutiny, *McDaniel v. Slade*, 5 Cir., 1968, 404 F. 2d 607, 609, "show no tendency to confuse or mislead the jury with respect to the principle of law applicable." *Allers v. Bohmker*, 7 Cir., 1952, 199 F. 2d 790, 792.

In this case we are satisfied that the District Judge's instructions on the issue whether Local 480's picketing was primary or secondary activity, "viewed, if necessary, through corrected lenses," *Delancey v. Motichek Towing Service, Inc.*, 5 Cir., 1970, ___ F. 2d ___ [No. 27401, June 1], properly expressed the law applicable to the issues in dispute.

We perceive no basis for upsetting the jury's verdict in favor of Gulf Coast.

AFFIRMED

APPENDIX D

Labor Cases—Cited 60 LC

Gulf Coast Building & Supply Co., Inc., v. Electrical Workers (IBEW), Local 480

[¶ 10,330] Gulf Coast Building & Supply Company, Inc., Plaintiff v. International Brotherhood of Electrical Workers, Local No. 480, AFL-CIO, Defendant.

United States District Court, Southern District of Mississippi. Civil No. 1185. July 29, 1969.

National Labor Relations Act

Secondary Boycotts—Cessation of Business as Object—Evidence of Unlawful Objective.—A union engaged in unlawful secondary boycott activity when it picketed a non-union subcontractor to compel a general contractor to cease doing business with the subcontractor. Although the signs at the pickets showed that the union had staged the picketing to protest substandard wages and conditions of the subcontractor, the evidence indicated that the real objective was to induce employees of the subcontractor to take concerted action against their employer. NLRA, Section 8(b)(4).

Back reference.—¶ 5220.0701.

Secondary Boycotts—Damages—Measure of Damages.—A secondary employer that sustained damages due to an unlawful secondary boycott by a union was allowed to recover the amount of $36,349.78 as actual damages. There was substantial evidence to support the verdict of the jury as to the amount awarded. NLRA, Section 8(b)(4).

Back reference.—¶ 5255.61.

E. C. Ward and R. Brent Forman, Laub, Adams, Forman & Truly, Natchez, Mississippi, for Plaintiff.

Dixon L. Pyles, Pyles & Tucker, Jackson, Mississippi, for Defendant.

[*Statement of Case*]

Cox, D. J.: The plaintiff sued the defendant under 29 U.S.C., 1952 Edition, Section 187 [1] (often referred to as Section 303, Title III) for an unfair labor practice as proscribed by 29 U. S. C., 1964 Edition, Section 158. [2] A jury awarded the plaintiff a verdict in the amount of $38,349.78 on April 23, 1969. The defendant on April 29, 1969 filed its motion for a judgment notwithstanding the verdict, or in the alternative for a new trial, assigning twenty-one grounds therefor. The plaintiff's proof showed a loss of $46,000.00.

[*Facts*]

In view of the jury verdict, it is proper that the facts be stated most favorably to the victorious litigant. Only a brief statement of facts is necessary for a proper disposition of this motion. The plaintiff (an Alabama corporation) was engaged in the construction of a shopping center known as Tracetown Center on Highway 61 bypass in Natchez, Mississippi. All of the general contractors' employees and all of the mechanical contractors' employees engaged in the construction of this site and buildings were union members. The electrical contractor on this job was non-union and one of the objec-

[1] 29 U. S. C., 1952 Edition, Section 187 (often referred to as Section 303, Title III) authorizes a suit in federal court for a secondary boycott of an activity affecting commerce.

[2] 29 U. S. C., 1964 Edition, Section 158 makes it an unfair labor practice for a labor organization or its agents: (4)(1) To induce or *encourage* any individual employed by any person engaged in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services where an object of such action is to force or coerce the joining of the union.

tives, if not the sole object of defendant's activity on this job which precipitated this suit, was to force plaintiff to expel this non-union subcontractor off this job. There was a main entrance to this job used by all crafts when defendant started its picket line at that gate on February 28, 1967 and kept such pickets there with their banners through June 23, 1967. The picket banner had written on it: "No dispute with any other employer IBEW, Local 480—protests substandard wages and conditions of Gulf Electrical Construction Company, Inc., electrical contractor. No dispute with any other employer." The pickets were instructed to say nothing to anybody and when asked about the picket sign to refer to the sign without comment.[3] The banner was not an

[3] The sign or banner carried by the pickets said it was directed only at the electrical contractor, but when interrogated about such activity, the picket would say: "Read the sign," or he would say nothing. That conduct did nothing toward dissipating the normal appeal of a picket line. In *Superior Derrick Corporation v. NLRB*, [39 LC ¶ 66,133] (5 CA) 273 F. 2d 891, 896-7, cert. denied 364 U. S. 816, it is said: "The primary union may hope that from the publicity other unionists may reach the decision that they as individuals do not wish to work under such circumstances. To this extent the Act affords no insulation against the pressures which might be generated on the primary employer. But if there is an expectation or a hope or a desire that employees of the secondary employer will be induced or encouraged to take concerted action so that the secondary employer will cease doing business with the primary employer, then the Act bars that activity." Cf. *NLRB v. International Rice Milling Co.*, [19 LC ¶ 66,346] 1951, 341 U. S. 665, 71 S. Ct. 961, 95 L. Ed. 1277. It is not, as the *Moore Drydock* doctrine phrased it, merely a question of negativing the existence of a dispute with the secondary employer. The activity, including the picket line, must be conducted in such a way that the normal appeal of a picket line is overcome. It must be done so that all secondary employees will know that the primary union does not seek what the law forbids—pressure on the primary employer through pressure from the secondary employer because of concerted pressure of secondary employees on that secondary employer. *NLRB v. Laundry, etc. Drivers, Local* 928, [36 LC ¶ 65,132] 9 Cir., 1958, 262 F. 2d 617, and *Retail Fruit & Vegetable Clerks' Union etc. v. NLRB*, [33 LC ¶ 71,085] 9 Cir., 1957, 249 F. 2d 591, 599. The law forbids such pressure whether the means be crude or sophisticated. The prohibition is continuous from the outset to the end. *Local* 74 *etc.* [*Carpenters*] *v. NLRB*, [19 LC ¶ 66-349] 1951, 341 U. S. 707, 714, 1316, 71 S. Ct. 966, 970, 95 L. Ed. 1309. Neither signs nor papers nor pamphlets nor silence automatically insulate the activity." Cf. *NLRB v. Building Service Employees International Union, Local No.* 105, [54 LC ¶ 11,512] (10 CA) 367 F. 2d 227.

informational sign which was calculated to fully inform an employee of a secondary employer and make him know that the picket line was not a barrier to his crossing.[4]

[Union Conduct Showed Unlawful Objective]

There is abundant evidence in this record from which a trier of facts could properly infer and conclude an intent on the part of this union to encourage, if not compel, plaintiff to submit through necessity to a dismissal of the electrical subcontractor so as to enable the other suppliers of material and services by other subcontractors to complete their work for the plaintiff.[5] The picket sign said that the dispute was with the electrical contractor only, but mute evidence belied that statement and defendant neither did nor said anything to advise anybody at the scene of this picket that they did not desire to accomplish an unlawful result. The pickets requested one supplier not to cross the line and he did not. Another supplier requested of the picket as to the meaning and purpose of the banner and was simply told to read the banner. That was simply not sufficient under the facts and circumstances in this case

[4] In *National Labor Relations Board v. Denver Building and Construction Trades Council*, [19 LC ¶ 66,347] 341 U. S. 675, 71 S. Ct. 943, there was a finding in that case that an object of the strike was to force the contractor to terminate the contract with the electrical subcontractor. The Court said that this was a proscribed object saying: "We hold that a strike with such an object was an unfair labor practice within the meaning of § 8(b)(4)(A)."

[5] "It is clear that, when a union pickets an employer with whom it has a dispute, it hopes, even if it does not intend that all persons will honor the picket line, and that hope encompasses employees of neutral employers who may in the course of their employment (deliverymen and the like) have to enter the premises. Almost all picketing, even at the situs of the primary employer and surely at that of the secondary, hopes to achieve the forbidden objective, whatever motives there may be and however small the chances of success. * * * In the absence of admissions by the union of an illegal intent, the nature of acts performed shows the intent." *Local 761 International Union of Electrical Radio and Machine Workers v. NLRB*, [42 LC ¶ 16,966] 81 S. Ct. 1285.

to preclude an action for violation of the National Labor Relations Act.[6]

There was more than substantial evidence before the jury to support their finding and conclusion that at least one object of the picketing on this occasion was to force a cessation of business. There is sufficient evidence in this record to support the verdict of the jury as to the amount awarded.[7]

Lastly, the defendant criticizes several instructions granted the plaintiff and some instructions given the defendant which were used as modified by the Court. It is the view of this Court that these instructions taken as a whole properly advised the jury as to the applicable law in this case. The verdict in this case is large but it is not excessive or shocking and finds substantial support in the evidence in this case.

The motion for a judgment notwithstanding the verdict of the jury is without merit. The alternative motion for a new trial is likewise without merit. The motion in its entirety in both respects will be overruled.

A judgment accordingly has been prepared and entered by the Court.

---

[6] *Aircraft & Engine Maintenance and Overhaul, Building, Construction, etc. v. Oolite Concrete Co.*, (5 CA) [51 LC ¶ 19,479] 341 F. 2d 210.

[7] In *Sheet Metal Workers International Association, Local Union No. 223 v. Atlas Sheet Metal Company of Jacksonville*, [56 LC ¶ 12,125] (5 CA) 384 F. 2d 101, it is said: "While the employer must prove that he has sustained some injury to his business or property, he need not detail the exact amount of damages suffered. It is sufficient if the evidence supports a just and reasonable approximation. *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 51 S. Ct. 248, 75 L.Ed. 544 (1931)."

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action Number 1185

GULF COAST BUILDING AND SUPPLY COMPANY, INC. Plaintiff

V.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 480, AFL-CIO Defendant

JUDGMENT

This cause this day coming on to be heard and the parties appearing in person and by counsel announced ready for trial, whereupon came a jury composed of Jimmy H. Allen and eleven others duly selected, impaneled and sworn according to law to try the issues first joined; and the Court having heard all of the testimony and received all of the evidence adduced by the parties, the jury retired under proper instructions of the Court to consider of their verdict, and presently returned into open court the following verdict:

"WE, THE JURY, FIND FOR THE PLAINTIFF (GULF COAST BUILDING AND SUPPLY COMPANY, INC.) AND ASSESS ITS DAMAGES AT $38,349.78"

which said verdict was duly received, entered and filed in open court as the verdict of the jury.

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that said defendant is indebted to said plaintiff in said amount, and that Gulf Coast Building

and Supply Company, Inc., as plaintiff, do have of and recover from said defendant (International Brotherhood of Electrical Workers, Local No. 480, AFL-CIO) in the said sum of $38,349.78, plus 6% interest thereon from the date of the filing of this suit until paid, together with all costs to be taxed as provided by law, and for all of which proper process may issue.

ORDERED AND ADJUDGED, this April 28, A. D., 1969.

HAROLD COX

United States District Judge

SUPREME COURT, U. S.

FILED
OCT 22 1970
E. ROBERT SEAVER, CLERK

Supreme Court of the United States

OCTOBER TERM, 1970

No. 663

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO-CLC,
Petitioner,

versus

GULF COAST BUILDING AND SUPPLY COMPANY, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

WILLIS C. DARBY, JR.,
Kilborn, Darby & Kilborn,
Post Office Box 2565,
Mobile, Alabama 36601.

INDEX.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	2
ARGUMENT	7
CONCLUSION	9
CERTIFICATE OF SERVICE	10
APPENDICES:	
A. International Brotherhood of Electrical Workers, Local 480, AFL-CIO (Gulf Coast Building And Supply Company, Inc.), 172 NLRB No. 64 (1968), enforced 413 F.2d 1085 (D. C. Cir. 1969)	11
B. International Brotherhood of Electrical Works, Local 480, AFL-CIO v. National Labor Relations Board, 413 F.2d 1085 (D. C. Cir. 1969)	34
C. Excerpts From Instructions To Jury	48

AUTHORITIES CITED

Page

Cases:

Brewery And Beverage Drivers And Workers, Local No. 67 (Washington Coca Cola Bottling Works, Inc.), 107 NLRB 299 (1953), enforced 220 F.2d 380 (D. C. Cir. 1955) . . . 8

Drivers, Chauffeurs and Helpers Local 639 (District Distributors, Incorporated), 122 NLRB 1259, 1262 (1959) 9

General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270, (Diaz Drayage Company), 117 NLRB 885, 886 (1957) . . . 8

Glaziers' Local Union No. 513 (Cupples Products Corporation), 148 NLRB 1648, 1650 (1964) 9

Glaziers' Local Union No. 513 (Cupples Products Corporation), 158 NLRB 1621, 1625 (1966) 9

International Brotherhood of Electrical Workers (Ets-Hokin & Galvin, Inc.), 138 NLRB 993, 1000 (1962) 9

International Brotherhood of Electrical Workers, Local 480, AFL-CIO (Gulf Coast Building and Supply Company, Inc.) 172 NLRB No. 64 (1968), enforced 413 F.2d 1085 (D. C. Cir. 1969) 9, 11

International Brotherhood of Electrical Workers, Local 480, AFL-CIO v. National Labor Relations Board, 413 F.2d 1085 (D. C. Cir. 1969) 9, 34

Local No. 636, Plumbing and Pipefitting Industry (Westinghouse Electric Corporation), 123

AUTHORITIES CITED—(Continued):

Cases—(Continued):	Page
NLRB 225, 230 (1959), enforced in relevant part 278 F.2d 858 (D. C. Cir. 1960)	9
Millwrights Local Union 1102 (Darin & Armstrong, Inc.), 162 NLRB 217, 218 (1966), enforced 403 F.2d 219 (6th Cir. 1968)	9
Painters District Council 38 v. Edgewood Contracting Company, 416 F.2d 1081 (5th Cir. 1969)	9
Patapsco Insurance Company v. Southgate, 5 Peters 604, 619	8
Queenan v. Territory of Oklahoma, 190 U.S. 548, 552	7
Sailors' Union of the Pacific (Moore Dry Dock Company) 92 NLRB 547, 549 (1950)	7
Seafarers' International Union of North America (Superior Derrick Corporation), 122 NLRB 52, 55 (1958), enforced in relevant part 273 F.2d 891, 895 (5th Cir. 1960), cert. denied 364 U.S. 816	8
Sheet Metal Workers International Association, Local Union No. 299 (S. M. Kisner and Sons), 131 NLRB 1196, 1201 (1961)	9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 663

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO-CLC,
Petitioner,

versus

GULF COAST BUILDING AND SUPPLY COMPANY, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the court of appeals (Pet. App. A11-A21) is reported at 428 F.2d 121. The opinion of the district court (Pet. App. A22-A26) on the motion of International Brotherhood of Electrical Workers, Local 480 AFL-CIO-CLC (Local 480) for judgment notwithstanding the verdict or in the alternative for a new trial (Pet. App. A22-A26) is reported at 71 LRRM 3212. The decisions in a companion unfair labor practice case are reported at 172 NLRB No. 64 (Resp. App. 11 - 33 *infra*) and 413 F.2d 1085 (D. C. Cir. 1969). (Resp. App. 34 - 47 *infra*.)

JURISDICTION.

The judgment of the court of appeals was entered on June 19, 1970. The petition for a writ of certiorari was filed September 7, 1970. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. Whether the exclusion of all union members from the jury panel constitutes ground for reversal where the record does not disclose such exclusion and objection to such exclusion was not raised until after verdict.

2. Whether a union engaged in common situs picketing has an affirmative duty to disabuse employees of neutral employers of the notion that the picketing was to encourage them to cease serving or working for a neutral employer where the picketing union knows that neutral employees will observe the picket line regardless of the wording on the picket sign.

STATUTES INVOLVED.

The relevant provisions of the Jury Selection and Service Act of 1968 and the National Labor Relations Act are set forth in the appendix to the petition (Pet. App. A1-A9).

STATEMENT.

Gulf Coast Building And Supply Company, Inc. (Gulf Coast) of Mobile, Alabama commenced construction of the Tracetown Shopping Center (Tracetown Center) in

Natchez, Mississippi in December, 1966. (R. 225.) On January 20, 1967, Erickson, the Business Manager of Local 480, wrote to Gulf Coast asking Gulf Coast's "careful consideration of awarding sub-contracts to qualified contractors who abide by the State and Federal approved apprenticeship training program and pay the prevailing wage scale in this area," and enclosed "a list of electrical contractors who have agreements with Local 480." (R. 226, 229, 402, 411, 520.) Gulf Coast invited bids and awarded the plumbing work to Wood Mechanical of Jackson, Mississippi and the electrical work to Gulf Electric Construction Company (Gulf Electric) of Crestview, Florida. (R. 231.) Wood Mechanical had a collective bargaining agreement with Local 480. (R. 267.) Gulf Electric did not have an agreement with Local 480. (R. 266, 304.) Gulf Coast employed mechanics and laborers from the Natchez area, some of whom were obtained through the Carpenter's Local, the Masonry Local and the Laborer's Local. (R. 233-234.)

On February 28, 1967, Local 480 began picketing the single entrance to the Traceytown Center. (R. 235, 416, 464.) The picket sign stated that Local 480 was protesting sub standard wages and working conditions of Gulf Electric, and that Local 480 had no dispute with any other employer. (R. 290.)

Erickson instructed the pickets, "don't say anything to anybody, if anybody asked them (the pickets) anything to have them read the sign." (R. 435, 443, 446.) Local 480 did not contact Gulf Electric before Local 480 began picketing. (R. 414.)

Prior to establishing the picket line, Erickson informed

several local unions that were affiliated with the Building Trades Council that Local 480 was going to establish a picket line at Tracetown Center. (R. 420, 422.) Erickson knew that it was the policy of unions affiliated with the Building Trades Council "not (to) cross the picket line" (R. 415), and Erickson "hoped" that they would not cross Local 480's picket line. (R. 415, 416, 422.) Local 480 commenced picketing in the mornings before Gulf Coast people arrived so they would recognize the picket line and stay off the job. (R. 476.)

On February 28, 1967, St. John, Gulf Coast's Project Manager, asked Erickson why Local 480 was picketing. Erickson told St. John "to read the sign" and mentioned the letter which Erickson had written to Gulf Coast on January 20. (R. 237, 417.)

Worley, a vice president of Gulf Coast, flew from Mobile to Jackson on February 28, to investigate the picket line. (R. 235.) Worley met Erickson by chance in a restaurant and inquired of Erickson the cause of the picketing. Erickson replied that he, Erickson, had told St. John to read the sign and told Worley that he, Erickson, did not want to discuss it with Worley, that Erickson's attorney would get in touch with Worley. (R. 237.) Thereafter, in a telephone conversation, Erickson's attorney informed Worley and Mitchell, President of Gulf Coast, that "you people are undermining us and we're protesting." (R. 246-247, 358.)

A picket, in the presence of Erickson, told McCollough, a truck driver for Delta Steel who approached the picket line with a load of fabricated steel (R. 320-321), "to read the sign" (R. 321), asked McCollough if he was "going to

carry it in there" (R. 324), and told McCollough that "he would appreciate. . . (McCollough) not crossing the picket line." (R. 324-325.)

On March 13, Local 480 established its picket line at 6:45 A.M., although no Gulf Electric employees reported to work until 10:00 A.M. (R. 248-249.)

On March 14, 1967, Gulf Coast constructed a second entrance called the North Gate, for use by everyone with the exception of Gulf Electric and people doing business with Gulf Electric; the original, or South Gate, was reserved for Gulf Electric and people doing business with Gulf Electric. (R. 249-250.) Local 480 continued to picket the South Gate until the South Gate was eliminated in June. (R. 250-251, 307.) Erickson instructed Local 480's pickets to keep a list of the people who went through the two gates. (R. 424, 425, 444, 449-450.) The pickets recorded the descriptions, tag numbers and contents of vehicles using the North and South Gates and turned them over to Erickson about once a week. (R. 449-450.)

Employees of Wood Mechanical returned to the Tracetown Center through the North Gate on March 15, 1967. (R. 249-250, 252.) Erickson told the membership of Local 480 that the plumbers had crossed Local 480's picket line. (R. 423.) According to Erickson, "They (plumbers) were told they would lose their membership if they crossed it." (R. 422.)

Cage and several other laborers who had been employed by Gulf Coast who were members of the Laborer's Local 747 returned to work after the North Gate was erected. (R. 331-332.) Erickson may have informed the membership of Local

480 that members of Laborer's Local 747 crossed Local 480's picket line. Cage and two other members of Local 747 were charged with crossing Local 480's picket line by Laborer's Local 747 and threatened with a fine. (R. 332, 337-338, 538.)

On the morning of March 22, after Worley informed Erickson of a proposal to have Wood Mechanical employ the electrical labor, at Worley's request, Erickson removed the picket line. (R. 258-259, 261, 267, 268, 405.) The minutes of Local 480 for March 23, 1967, state:

> Bro. Erickson reported on results of picket on Natchez Tracetown job. Wood Mechanical & Electrical has been awarded the Electrical labor on this job. (R. 429-430, 474, 522.)

The proposal was not effected and on March 23, the picketing resumed. On March 23, at a meeting arranged by Worley between Worley, Erickson, and Fleming, of Gulf Electric, Gulf Coast and Gulf Electric offered to pay Local 480's prevailing wage scale and to comply with the "prevailing working condition." (R. 266.) Erickson stated he would have to discuss this with his lawyer. (R. 266, 408-409.) Erickson was apparently unable to reach his lawyer that day, and was not heard from again. (R. 267.)

The picketing continued until June 23, 1967. (R. 442.)

Over the objection of Local 480, the court charged the jury that Local 480 was under a duty to expressly instruct employees of neutral employers that they were free to cross the picket line and to instruct employees and suppliers of Gulf Coast that had refused to cross the picket line to re-

turn to work and cross the picket line without violating any duty to Local 480. (R. 481, 496-505.)

The court also charged the jury that in order for Gulf Coast to prevail, the jury must find that (1) Local 480 knowingly induced and encouraged one or more employees of Gulf Coast, Wood Mechanical or Delta Steel to cease work, (2) with an object or purpose or intent to force or require Wood Mechanical and Delta Steel to cease doing business with Gulf Coast (R. 482-483); and, that the "key factor in this case is the object of the union's activity." (R. 487.) The court also instructed the jury on the *Moore Dry Dock*, presumption of legality. (R. 483.)

Local 480 objected to the district court's excusing union members from the jury panel for the first time in Local 480's motion for a new trial. (R. 203.)

ARGUMENT.

The principles applied by the court of appeals in affirming the district court are well settled. *Queenan v. Territory of Oklahoma*, 190 U.S. 548, 552, established the principle that a party may "not speculate on the chances of getting a verdict" and after verdict object to the composition of the jury. The court of appeals correctly followed the practice of considering all instructions together which was ini-

---

Sailors' Union of the Pacific (Moore Dry Dock Company) 92 NLRB 547, 549 (1950).

Pertinent excerpts from the instructions are set forth in the appendix to this brief. (Resp. App. 48-52, *infra*.)

Counsel does not agree with petitioner's statement of how the union members were excluded by the district court. (Petition pp. 3-4, 21.)

tially approved by this Court in *The Patapsco Insurance Company v. Southgate*, 5 Peters 604, 619.

Whether the substance of the jury charges properly state the applicable law turns upon the facts of this case and will have little, if any, effect on anyone except the litigants.

Moreover, the alleged improper jury charges requiring affirmative action by Local 480 are in accord with the decisions of the Board. The Board, with court approval, has interpreted section 8(b)(4) to require affirmative action on the part of a union engaged in common situs picketing to "disabuse . . . employees (of neutral employers) of the notion that the picketing was to encourage them to cease serving" a neutral employer. *General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270, (Diaz Dryage Company)*, 117 NLRB 885, 886 (1957), enforced 252 F.2d 619 (D. C. Cir. 1958), cert. denied 356 U.S. 931. In *Seafarers' International Union of North America (Superior Derrick Corporation)*, 122 NLRB 52, 55 (1958), enforced in relevant part 273 F.2d 891, 895 (5th Cir. 1960), cert. denied 364 U.S. 816, the Board held that where, as here, a union "could reasonably anticipate" that employees of neutral employers "would not cross the picket line, regardless of the legend on the picket signs," the union was under an affirmative duty "to make clear" to the employees of neutrals "that the picketing was not directed against them in order to minimize any possible interference with the work of the neutral employer."

---

[1] Other cases where the Board has held that a union has an affirmative duty to make clear that common situs picketing is directed solely against the primary employer are: *Brewery And Beverage Drivers*

Assuming that the instructions pertaining to liability were erroneous, Local 480 was not prejudiced because Gulf Coast was entitled to a partial summary judgment or directed verdict on liability as the finding of the Board that Local 480 violated the Section 8(b)(4) of the National Labor Relations Act in the companion unfair labor practice case was res judicata as to liability in this § 303 action. *Painters District Council 38 v. Edgewood Contracting Company*, 416 F.2d 1081 (5th Cir. 1969).

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIS C. DARBY, JR.,
P. O. Box 2565,
Mobile, Alabama 36601.

And Workers, Local No. 67 (Washington Coca Cola Bottling Works, Inc.), 107 NLRB 299 (1953), enforced 220 F.2d 380 (D. C. Cir. 1955); *Drivers, Chauffeurs and Helpers Local 639 (District Distributors, Incorporated)*, 122 NLRB 1259, 1262 (1959); *Local No. 636, Plumbing and Pipefitting Industry (Westinghouse Electric Corporation)*, 123 NLRB 225, 230 (1959), enforced in relevant part 278 F.2d 858 (D. C. Cir. 1960); *Sheet Metal Workers International Association, Local Union No. 299 (S. M. Kisner and Sons)*, 131 NLRB 1196, 1201 (1961); *International Brotherhood of Electrical Workers (Ets-Hokin & Galvan, Inc.)*, 138 NLRB 993, 1000 (1962); *Glaziers' Local Union No. 513 (Cupples Products Corporation)*, 148 NLRB 1648, 1650 (1964); *Glaziers' Local Union No. 513 (Cupples Products Corporation)*, 158 NLRB 1621, 1625 (1966); *Millwrights Local Union 1102 (Darin & Armstrong, Inc.)*, 162 NLRB 217, 218, (1966), enforced 403 F.2d 219 (6th Cir. 1968).

172 NLRB No. 64 (1968) Resp. App. 11 *infra*, enforced 413 F.2d 1085 (D.C. Cir. 1969) Resp. App. 34 *infra*.

CERTIFICATE OF SERVICE.

I, Willis C. Darby, Jr., one of the attorneys for Gulf Coast Building And Supply Company, Inc., Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of October 1970, I served copies of the foregoing BRIEF FOR THE RESPONDENT IN OPPOSITION on International Brotherhood of Electrical Workers, Local 480, AFL-CIO-CLC by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to Dixon L. Pyles, Esquire, its Chief Counsel, at 507 East Pearl Street, Jackson, Mississippi 39201.

WILLIS C. DARBY, JR.,
Attorney for Gulf Coast Building
and Supply Company, Inc.,
P. O. Box 2565,
Mobile, Alabama 36601.

APPENDICES

APPENDIX A.

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 15-CC-302

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO,

and

GULF COAST BUILDING & SUPPLY COMPANY, INC.

DECISION AND ORDER.

On January 24, 1968, Trial Examiner Sydney S. Asher, Jr. issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, and the General Counsel filed cross-exceptions and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record of this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that Respondent, International Brotherhood of Electrical Workers, Local 480, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D.C., June 26, 1968.

FRANK W. McCULLOCH,
Chairman.

JOHN H. FANNING,
Member.

GERALD A. BROWN,
Member.

In affirming the Trial Examiner's finding of an 8(b)(4)(B) violation, we do not, in the circumstances of this case, rely upon his conclusion that evidence of Respondent's unlawful object was reflected in the fact that Respondent's picketing did not conform to the standards set forth in *Sailor's Union of the Pacific, AFL (Moore Dry Dock Company*, 92 NLRB 547, in that Respondent "did not seek permission from Gulf Coast (the general contractor) to picket inside the Tracetown project closer to where Gulf Electric's employees were working."

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

Case 15—CC—302

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO

and

GULF COAST BUILDING AND SUPPLY COMPANY, INC.

Harry L. Hopkins, Esq., for the General Counsel.
Willis C. Darby, Jr. (Kilborn, Darby and Kilborn), of Mobile, Ala., for Gulf Coast.
Dixon L. Pyles, Esq. (Pyles and Tucker), of Jackson, Miss., for the Respondent and for witnesses Ralph Brummett and John Erickson.

TRIAL EXAMINER'S DECISION.

SYDNEY S. ASHER, JR., Trial Examiner: On March 28, 1967, Gulf Coast Building and Supply Company, Inc.,

Member Manning, in agreeing that Respondent violated Section 8(b)(4)(ii)(B) of the Act, *relies only on evidence that Respondent's pickets induced McCullough, an employee of a neutral employer, to refuse to cross the picket line.* See his general views as expressed in *International Brotherhood of Electrical Workers, Local Union No. 11 (General Telephone Company of California)*, 151 NLRB 1490 footnote 4; and *International Brotherhood of Electrical Workers, Local Union No. 11 (L.G. Electric Contractors, Inc.)*, 154 NLRB 766 at p. 769.

Mobile, Alabama, herein called Gulf Coast, filed charges against International Brotherhood of Electrical Workers, Local No. 480, AFL-CIO, Jackson, Mississippi, herein called the Respondent. Amended charges were filed on July 25, 1967. On August 22, 1967, the General Counsel of the National Labor Relations Board issued a complaint against the Respondent alleging that since on or about February 28, 1967, Respondent has induced and encouraged employees of Gulf Coast, Wood Mechanical Contractors, Delta Steel Company, and other persons, to engage in strikes, and has threatened Gulf Coast, Wood Mechanical Contractors, Delta Steel Company, and other persons; and that an object of this conduct is to force or require Gulf Coast, Wood Mechanical Contractors, Delta Steel Company, and other persons to cease doing business with Gulf Electric Construction Company, Inc., herein referred to as Gulf Electric. It is alleged that such conduct violates Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*), herein called the Act. Thereafter, the Respondent filed an answer denying most of the material allegations of the complaint.

Pursuant to notice, a hearing was held before me on October 9, 10, and 11, 1967, at Jackson, Mississippi. All parties were represented and were afforded an opportunity to participate fully in the hearing. Since the close of the hearing all parties have filed briefs, which have been duly considered.

---

[1] Immediately prior to the opening of the hearing, with the consent of all parties, a prehearing conference was held at Jackson, Mississippi. All parties were represented and were afforded an opportunity to participate fully therein.

Upon the entire record in this case, including my observation of the witnesses, I make the following:

FINDINGS OF FACT.

I. The Board's Jurisdiction.

Gulf Coast Building and Supply Company, Inc., is an Alabama corporation with its principal office and place of business in Mobile, Alabama, where it is engaged in commercial and residential construction. It is the general contractor for the construction of the Tracetown Shopping Center located in Natchez, Mississippi, herein called the Tracetown project. During the 12-month period preceding August 22, 1967, Gulf Coast purchased materials valued at more than $50,000, which were shipped directly to it at the Tracetown project from points outside the State of Mississippi.

At all material times, Gulf Electric Construction Co., Inc., a Florida corporation, herein called Gulf Electric, has performed work at the Tracetown project pursuant to a subcontract with Gulf Coast, for which services Gulf Electric has received or will receive during a 12-month period beginning in February 1967 in excess of $100,000.

At all material times, Wood Mechanical Contractors, herein called Wood, and Delta Steel Company, herein called Delta, have performed work at the Tracetown project pursuant to subcontracts with Gulf Coast. Both Wood and Delta are, and at all material times have been, engaged in the building and construction industry.

In view of the above facts, it is concluded that Gulf Coast and Gulf Electric are, and at all material times have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Respondent and its Agents.

The complaint alleges, the answer admits, the Board has found, and it is now found that the Respondent is, and has at all material times been, a labor organization within the meaning of Section 2(5) of the Act. The complaint alleges, the Respondent admitted at the prehearing conference, and it is found that John L. Erickson is, and at all material times has been, business manager of the Respondent and its agent within the meaning of Section 2(13) of the Act.

The complaint alleges and the answer denies that Herbert Robinson, Jeff Laird, and Richard Walters are, and at all material times have been, authorized pickets and agents of the Respondent within the meaning of the Act. Erickson admitted that the Respondent authorized the picketing described hereafter, and that Robinson, Laird, and Walters were paid by the Respondent to conduct such picketing. Accordingly, in agreement with the complaint, it is found that, at all material times, Robinson, Laird, and Walters were agents of the Respondent within the meaning of the Act.

International Brotherhood of Electrical Workers, Local 480 (Vickers, Inc., Div. of Sperry Rand), 156 NLRB 629, 630.

The complaint alleges, and the answer denies, that certain other individuals were agents of the Respondent. I find it unnecessary to decide these issues.

III. The Unfair Labor Practices.

A. Events.

The complaint alleges, the answer admits, and it is found that, at all material times, the Respondent was engaged in a labor dispute with Gulf Electric. *It had no labor dispute with Gulf Coast* or any employers engaged in work at the Tracetown project other than Gulf Electric.

On February 28, 1967, the Respondent began picketing the only entrance to the Tracetown project. The picket bore a sign reading:

NO DISPUTE WITH
ANY OTHER EMPLOYER
I.B.E.W. LOCAL 480
PROTESTS
SUB STANDARD WAGES
AND CONDITIONS OF
GULF ELECTRIC CONSTR. CO., INC.
ELECTRICAL CONTR.
NO DISPUTE WITH
ANY OTHER EMPLOYER

Some employees of neutral subcontractors, including some of Wood's employees, refused to cross the picket line. Other employees crossed the picket line and went to work inside the Tracetown project.

On either March 15 or March 30[1] Gulf Coast opened a

[1] All dates herein refer to the year 1967.

new "south gate" to the Tracetown project. It bore a sign reading:

> South gate. Gulf Electric Construction Company, Inc. This entrance reserved for employees of, and carriers of suppliers making deliveries to, Gulf Electric Construction Company, Inc.

At the same time, a sign was placed over the original gate which read:

> North gate. This entrance reserved for employees of, and carriers and suppliers making deliveries to (here some names were listed). Employees of carriers and suppliers making deliveries to Gulf Electric Construction Company prohibited from using this gate. Employees or carriers of suppliers making deliveries to Gulf Electric Construction Company must use south gate.

There was also an arrow pointing toward the south gate. Upon the establishment of the south gate, the picket moved from his former location to the new south gate. While the south gate was in existence, no picketing was conducted at the north gate. In early June Gulf Coast demolished the "south gate," leaving the original gate as the sole remaining entrance to the project. The Respondent's picket then returned to the position he had occupied before the "south gate" had been opened.

The picketing ceased on June 23. All in all, there was picketing at one gate or the other continuously from February 28 until June 23, except for part of the day on March

22. Throughout this period the employees of Gulf Electric continued to work at the Tracetown project behind the picket line.

B. Violation of Section 8(b)(4)(i)(B).

1. Inducement and encouragement.

a. *Contentions of the parties.*

The complaint alleges that, since on or about February 28, 1967, the Respondent "has induced and encouraged . . . employees of Gulf Coast, Wood Mechanical Contractors, Delta Steel Company, and other persons to refuse to perform services for their respective employers and to engage in work stoppages . . . has picketed or caused to be picketed the Tracetown (project), and has ordered, directed, instructed, requested, and appealed to the (said) employees . . . to refuse to perform services and to cease work for their respective employers." The answer denies these allegations.

b. *From February 28 to March 15 or 30*

The Board has held

> picketing at the secondary employer's premises alone is not *per se* "inducement or encouragement" within the meaning of clause (i). Whether picketing constitutes "inducement or encouragement" of employees of secondary employers to engage in work stoppages or refusals to perform services is issue to be re-

solved in the light of all the evidence in a particular case.

What is the evidence here?

During the period from the commencement of the picketing until the opening of the new "south gate," the Respondent placed a picket at the only entrance to the project then in existence. This was the entrance through which employees of neutral employers entered the jobsite.

Clayton Spillman, business representative of Laborer's Local 747 in Natchez, testified:

> Q. Is it customary in this area for one building trades union to honor the other building trades picket line?
>
> A. I am sure that it is.

And Erickson admitted on cross-examination:

> (By Mr. Darby):
>
> Q. What was the policy that you thought that existed among the building and trades unions and their members?

Upholsterers Frame & Bedding Workers Twin City Local No. 61, affiliated with Upholsterers' International Union of North America, AFL-CIO (Minneapolis House Furnishing Company and L. S. Donaldson Company), 132 NLRB 40, 41. See also Local 459, International Union of Electrical, Radio and Machine Workers, AFL-CIO (Friden, Inc. and Novelty Veiling Co., Inc., 134 NLRB 598, 599. But compare International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 41, A.F. of L., 96 NLRB 957, 958; and Local No. 25 Bakery & Confectionery Workers International Union of America, AFL-CIO (King's Bakery, Inc.), 116 NLRB 290, 293.

> A. It is . . . common knowledge that most craftsmen that belong to the building trades or individual craft unions do not cross the picket signs if it is by another craft, or even by their own building and trades.

The correctness of the views thus expressed by Spillman and Erickson is attested to by the fact that the Respondent's picketing at the entrance to the Tracetown project did, indeed, keep some employees of neutral employers from performing work behind the picket line. *But this was not all.* On March 1 Walter McCullough, a truckdriver employed by Delta, arrived at the Tracetown project with a truckload of steel consigned to Gulf Coast. The truck bore Delta's name on its side. Seeing two pickets at the entrance, McCullough stopped his truck, got down, and approached them on foot. He testified:

> TRIAL EXAMINER:
> Did you talk to both of them?
> THE WITNESS:
> Yes, sir.
> TRIAL EXAMINER:
> So the three of you put your heads together, or did you talk to them individually?
> THE WITNESS:
> No, sir. I tried to talk to them individually. And I just told them that—when I walked up there, *they just told me not to cross the picket line.* (Emphasis supplied.)

From this it is concluded that the Respondent's pickets, Robinson, Laird, or Walters, orally appealed to McCullough, an employee of a neutral employer making a delivery to a neutral employer, not to cross the picket line. For these reasons, it is found that during this period the Respondent induced

and encouraged *employees* of *neutral* employers to engage in a work stoppage.

c. *From early June to June 23.*

In early June, when the new "south gate" was demolished, the picket returned to his original position at the only remaining entrance to the project. As they had all along, employees of neutral employers, of necessity, utilized this entrance—the only one left. Thus, as before, the picketing induced and encouraged these employees not to cross the picket line. But the pickets did not only carry a sign. During this period, upon instructions of Erickson, *they also maintained a written record of the identity of individuals and the license numbers of vehicles crossing the picket line.*[1] Such recording constituted additional inducement and encouragement of employees of neutral employers not to cross the picket line.

2. Object.

a. *Contentions of the parties*

The complaint alleges that "(an object (of the inducement and encouragement) was and is to force or require Gulf Coast Wood Mechanical Contractors, Delta Steel Company, and other persons . . . to cease doing business with Gulf Electric." In his brief, the General Counsel contends:

[1] I need not, and do not, decide whether, as the General Counsel and Gulf Coast contend, such listing was engaged in even *before* the establishment of the new "south gate." Nor need I decide whether the Respondent induced or encouraged employees of neutral employers not to work in the project during the period when the separate "south gate" was in existence.

"A brief review of . . . the record as a whole will reveal a scheme on the part of (the) Respondent to force Gulf Coast and other persons to cease doing business with Gulf Electric."

The answer denies the allegations of the complaint. Pointing out in its brief that "the picketing at all times was conducted in keeping with the *Moore Dry Dock* standards" and that "While important, the location of the union's activities is not conclusive," the Respondent contends that the General Counsel has failed to prove "that the objectives of Local 480 were to compel Gulf Coast to cease doing business with Gulf Electric."

b. *Conclusions.*

The United States Court of Appeals for the Second Circuit, speaking through Judge Moore, recently stated:

> In determining the objectives of Local 25, the Board is entitled to look to the totality of the union's conduct, and it is not bound by the union's signs or professed object in picketing. (Cases cited.) *The fact that the union might have had other, valid reasons for picketing—e.g., to enforce area standards—does not absolve it from having an illegal objective.*

Applying that principle to the instant case, the record herein contains clear and convincing evidence that an object of the Respondent's conduct was proscribed by Section 8(b) (4) (B) of the Act.

N.L.R.B. v. Local 25, International Brotherhood of Electric Workers, AFL-CIO (Emmet Electric Co.) 66 LRRM 2355, 2357-58 (C.A. 2).

1. Where, as here, a common situs is involved, the Board in *Moore Dry Dock*[1] laid down certain standards to aid in determining whether picketing is primary or secondary. One standard is that picketing "limited to places reasonably close to the location of the *situs*" may be considered primary.[2] Here, however, Erickson admittedly did *not* seek permission from Gulf Coast to picket inside the Tracetown project closer to the place where Gulf Electric's employees were working. Thus, the possibility that neutrals would become involved was enhanced.

2. The executive board of the Respondent met on March 15. The minutes of this meeting contain the following entry under the heading "Business Manager reports":

> Our sister local, No. 605 has crossed our picket line on the Natchez Miss. Tracetown shopping Center job.

In addition, Erickson admitted reporting to the Respondent's members or executive board that members of the Plumbers' Union were working behind the picket line. (As Gulf Electric was the *electrical* subcontractor, these plumbers presumably worked for a neutral employer.) This reveals the Respondent's interest in keeping employees of neutral employers from working inside the Tracetown project.

3. On the morning of March 22, at Worley's request, Erickson temporarily removed the picket. That night a regu-

---

[1] *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547.

[2] *Teamsters Local Union No. 408 (Chas. S. Wood & Co.)*, 132 NLRB 117, 125.

lar meeting of the Respondent's membership was held. The minutes contain the following entry:

> Bro. Erickson reported on results of picket on Natchez Tracetown job. Wood Mechanical & Electrical has been awarded the electrical labor on this job.

Erickson admitted that he had spoken to Worley on the telephone earlier that day, and that he informed the membership at the meeting that the picket had been removed. On the basis of these admissions and the above-quoted entry in the minutes, it is concluded that Erickson took down the picket line temporarily that day because he understood (rightly or mistakenly) that Gulf Coast had awarded or would award to Wood (a firm with which the Respondent had a collective-bargaining contract) all the electrical work previously subcontracted to Gulf Electric; in short, that Gulf Electric would be eliminated from the Tracetown project.

4. On the morning of March 23 Bruce Worley, assistant vice president of Gulf Coast, J. B. Fleming, an official of Gulf Electric, and Paul Gilmet, Gulf Electric's general superintendent, conferred with Erickson in Worley's trailer. Worley, on behalf of Gulf Coast, offered: "From now on we will pay the union wage scale to Mr. Fleming's men. We will maintain the working standards, whatever they are." He asked: "would this satisfy Mr. Erickson's requirements?" Erickson was noncommittal. Fleming "offered to sign an agreement with Mr. Erickson, a working agreement for that job only." Erickson declined. On March 25, in a telephone

[10] Erickson testified that the entry was erroneous. I do not credit this uncorroborated testimony.

conversation with Dixon Pyles Esq., the Respondent's attorney. Worley repeated his offer to pay the electricians employed at the Tracetown project "the union wage rate, (and) we would abide by any established working condition." Pyles promised "to look into it." Worley heard nothing more concerning his offer or Fleming's. Pickets remained posted at the jobsite for approximately 3 months thereafter. This indicates the Respondent's lack of interest in obtaining area wages and working conditions for Gulf Electric's employees.

A prehearing statement given by Erickson to a Board agent was put into evidence. It contains the following paragraph:

> During our conversation in Worley's trailer on the morning of the 23rd, some one either Worley or Fleming asked me for a copy of our contract so that they could look it over and see what the area scale and working conditions were. I told them I would give them one. However, I never did.

Moreover, Erickson admitted that, before establishing the picket line, he had made no attempt to contact any official of Gulf Electric. This further underscores the Respondent's *apathetic attitude* toward securing standard wages and working conditions for employees of Gulf Electric.

It may be that the protection and maintenance of area standards was one of the objects of the Respondent's con-

The findings regarding the March 23 meeting and the March 25 telephone conversation are based upon Worley's testimony. It is found that, during the March 25 telephone conversation, Pyles was an agent of the Respondent acting within the scope of his authority to receive communications from Worley regarding this labor dispute.

duct, but in my opinion it clearly was not the sole object. Consideration of the five factors discussed above convinces me "that an object of the picketing was to put pressure upon Gulf Coast, a neutral, so that it would cancel its contract with Gulf Electric, the primary employer, and the latter firm would be banished from the Tracetown project. Such an attempt to enmesh Gulf Coast in a dispute not of its own making violates Section 8(b)(4)(i)(B) of the Act.

c. *Violation of Section 8(b)(4)(ii)(B).*

The complaint alleges that since on or about February 28, the Respondent "has threatened, coerced, and restrained Gulf Coast, Wood, Delta, and other persons" and that an object of this conduct "was and is to force or require Gulf Coast, Wood Mechanical Contractors, Delta Steel Company, and other persons . . . to cease doing business with Gulf Electric." The answer denies these allegations.

It is found that by picketing from February 28 to March 15 or 30, and from early June to June 23, which caused employees of neutrals to withhold their services, by appealing to McCullough not to cross the picket line, and by *maintain-*

The General Counsel and Gulf Coast contend that many other matters (including the fact that before the picket line was established Erickson notified officials of other unions in the Natchez area of his plan) prove the illegal object of the picketing. However, I base my finding only on the five enumerated factors. *I deem it unnecessary to decide whether other facts also support the conclusion reached, as such decisions would merely be cumulative and would not alter the recommendation which I make herein. Local 171, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Joseph J. Bancs, D/B/A Bancs Floor Covering), 167 NLRB No. 138; and Building and Construction Trades Council of Fond du Lac County, et al. (Roger W. Peters Construction Co., Inc.), 168 NLRB No. 81, footnote 1.*

ing a written record from early June to June 23 of the identity of individuals and the license numbers of vehicles crossing the picket line, the Respondent threatened, coerced, and restrained Gulf Coast, Wood, and Delta, all of whom were engaged in commerce or in an industry affecting commerce. For reasons set forth above, it is concluded that an object of this conduct was to force or require Gulf Coast to cease doing business with Gulf Electric. Accordingly, this conduct was proscribed by Section 8(b)(4)(ii)(B) of the Act. [14]

Upon the above findings of fact and upon the entire record of this case, I make the following:

CONCLUSIONS OF LAW.

1. Gulf Coast Building and Supply Company, Inc., Gulf Electric Construction Co., Inc., Wood Mechanical Contractors, and Delta Steel Company are, and at all material times have been, engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

---

[14] See *Asbestos Workers Local Union No. 16 (Cal-Neva Insulation Company)*, 163 NLRB No. 63.

[15] The General Counsel produced evidence tending to show that on March 6 Riddle and Hale, masonry contractors, entered the Tracetown project and that the picket told them: "Don't cross the picket line." In his brief, the General Counsel states: "The evidence does not support the allegation that the utterances directed toward Hale and Riddle constitute a separate violation of Section 8(b)(4)(ii)(B) of the Act and the General Counsel does not seek a finding on this basis." In view of this statement, I place no reliance on this alleged incident in concluding that the Respondent violated that section of the Act.

2. International Brotherhood of Electrical Workers, Local 480, AFL-CIO, is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

3. By inducing and encouraging individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in a strike or refusal to perform services, with an object of forcing or requiring Gulf Coast Building and Supply Company, Inc., to cease doing business with Gulf Electric Construction Co., Inc., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

4. By coercing or restraining persons engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring Gulf Coast Building and Supply Company, Inc., to cease doing business with Gulf Electric Construction Co., Inc., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

5. The above-described unfair labor practices tend to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in this case, I make the following:

RECOMMENDED ORDER

It is recommended that International Brotherhood of Electrical Workers, Local 480, AFL-CIO, Jackson, Mississippi, its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any person engaged in commerce or an industry affecting commerce, other than Gulf Electric Construction Co., Inc., to engage in, a strike or refusal in the course of their employment to perform any services, where an object thereof is to force or require Gulf Coast Building and Supply Company, Inc., or any person, to cease doing business with Gulf Electric Construction Co., Inc.

(b) Threatening, coercing, or restraining any person, engaged in commerce or an industry affecting commerce where an object thereof is to force or require Gulf Coast Building and Supply Company, Inc., or any other person, to cease doing business with Gulf Electric Construction Co., Inc.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls in Jackson, Mississippi, copies of the attached notice marked "Appendix." Copies of the said notice, on forms provided by

In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In

the Regional Director for Region 15, after being duly signed by a representative of the Respondent, shall be posted by it immediately upon receipt thereof, and shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material."

(b) Sign and return copies of the said notice to the said Regional Director for posting by Gulf Coast Building and Supply Company, Inc., Wood Mechanical Contractors, and Delta Steel Company, should these companies be willing, at all places where notices to their employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith."[16]

Dated at Washington, D.C.

---

the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

[16] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the day of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE

TO ALL MEMBERS OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO, AND TO EMPLOYEES OF FIRMS WORKING ON, OR DELIVERING TO, THE TRACETOWN SHOPPING CENTER IN NATCHEZ, MISSISSIPPI

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage any person engaged in commerce or an industry affecting commerce, other than Gulf Electric Construction Co., Inc., to engage in, a strike or refusal in the course of their employment to perform any services, where an object thereof is to force or require Gulf Coast Building and Supply Company, Inc., or any other person, to cease doing business with Gulf Electric Construction Co., Inc.

WE WILL NOT threaten, coerce, or restrain any person engaged in commerce or an industry affecting commerce, where an object thereof is to force or require Gulf Coast Building and Supply Company, Inc., or any other person, to cease doing business with Gulf Electric Construction Co., Inc.

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 480, AFL-CIO
(Labor Organization)

Dated ..... By .....

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members or employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70113, Telephone 527-6361.

APPENDIX B.

UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT.

No. 22146.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AEL-CIO,
Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Argued Feb. 26, 1969.

Decided April 16, 1969.

Before BURGER, WRIGHT and ROBINSON, Circuit Judges.

J. SKELLY WRIGHT, Circuit Judge:

The National Labor Relations Board found that Local 480 of the International Brotherhood of Electrical Workers violated the secondary boycott section of the National Labor Relations Act, Section 8 (b) (4) (i) and (ii) (B). For

---

29 U.S.C. § 158(b) (4) (i) and (ii) (B) (1964):

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(4) (i) to engage in, or to induce or encourage any individual

the reasons stated herein, we deny the petition for review and order enforcement of the Board's order.

I.

Gulf Coast Building and Supply Company was the general contractor for construction of a shopping center in Natchez, Mississippi. It used Gulf Electric Construction Company (no affiliation with Gulf Coast) as its electrical subcontractor. Gulf Electric was not a union employer. Construction of the shopping center began in January 1967. On February 28 the union started picketing the single entrance gate to the construction site. The union claimed that its sole dispute was with Gulf Electric, the dispute being that Gulf Electric did not pay area wage scales and did not follow area working standards which were adhered to by union electrical employers, thus undermining those scales and

employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * * *

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing[.]"

The decision and order of the Board are reported at 172 N.L.R.B. No. 64 (June 26, 1968).

standards. The sole purpose of the picketing, according to the union, was to pressure Gulf Electric into meeting the area scales and standards.

Consistent with the union's avowed purpose, the pickets carried signs which read:

NO DISPUTE WITH
ANY OTHER EMPLOYER
I.B.E.W. LOCAL 480
PROTESTS
SUB STANDARD
WAGES AND
CONDITIONS
OF
GULF ELECTRIC CONSTR. CO., INC.
ELECTRICAL CONTR.
NO DISPUTE WITH
ANY OTHER EMPLOYER

The pickets were instructed to tell any persons who asked whether to cross the picket line that the pickets could not tell them what to do—that they should just read the sign.

The picketing lasted, with one short break, until June 23, 1967, at which time it was voluntarily stopped. The pickets patrolled at the sole gate to the construction site until March 1967 when Gulf Coast built a second gate for use solely by employees of Gulf Electric; until this second gate was demolished in June, the pickets restricted their picketing to this special gate. During the course of the picketing some employees of Gulf Coast and of other subcontractors

working at the site, as well as some persons delivering supplies to the site, refused to cross the picket line.

In July 1967 Gulf Coast filed unfair labor practice charges against the union. At the hearing before the Board trial examiner, the union's position was that its dispute was solely with the primary party, Gulf Electric, and that its picketing followed the guidelines for picketing one subcontractor at a common construction site as set out in the Board's decision in *Moore Drydock*.[1] However, the trial examiner found, and the Board affirmed, that the union had an unlawful secondary object of its picketing: to force Gulf Coast to sever its contract with Gulf Electric and hire a union electrical subcontractor instead.

In reaching this conclusion, the trial examiner (and the Board) relied upon substantial evidence, including certain actions of the union in refusing to cooperate with Gulf Electric and Gulf Coast when they attempted to satisfy the union's stated picketing demands, which, the Board concluded, showed that the union's real aim was not forcing Gulf Electric to meet area standards but to force Gulf Coast to replace Gulf Electric.

We affirm the Board's order on the basis of this evidence. We reject the union's contention, discussed *infra* in Part IV, that the Board relied upon impermissible evidence in finding a violation of the Act.

---

[1] Sailors' Union of the Pacific [Moore Drydock], 92 N.L.R.B. 547 (1950).

II.

It is conceded that if the union's sole object was to get Gulf Electric to pay area standards, and the union's actions were not intended to pressure neutral employers to cease doing business with Gulf Electric, and the means used by the union were reasonably limited to accomplish its primary object, then the union's actions did not constitute a secondary boycott. On the other hand, it is also conceded that if the union did have the purpose of forcing or coercing Gulf Coast to sever its ties with Gulf Electric, and the union's picketing was designed to accomplish that purpose, then the union's actions amounted to a secondary boycott, prohibited by Section 8(b)(4)(i) and (ii)(B) of the Act.

In *Moore Drydock* the Board

> "set out four standards for picketing in [common situs] situations which would be presumptive of valid primary activity: (1) that the picketing be limited to times when the situs of dispute was located on the secondary premises, (2) that the primary employer be engaged in his normal business at the situs, (3) that the picketing take place reasonably close to the situs, and (4) that the picketing clearly disclose that the dispute was only with the primary employer. These tests were widely accepted by reviewing federal courts. . . ."

Local 761, Int. U. of Electrical etc. Workers v. N. L. R. B. [General Electric], 366 U.S. 667, 677, 81 S.Ct. 1285, 6 L.Ed.2d 592 (1961). Here Gulf Electric, the primary employer, was doing its normal business on the premises of the secondary employer, Gulf Coast. The picketing was limited to these premises; it took place at the sole gate to the situs.

later shifting to the special gate built for Gulf Electric. The picket signs stated clearly and unequivocally that the dispute was only with Gulf Electric. Thus the *Moore Drydock* guidelines were followed.

The Board, however, in determining whether the picketing was secondary, went beyond the union's avowed primary purpose and its compliance with *Moore Drydock*. The Board relied on the following evidence: the union did not, before, or for almost a month after, the picketing began, make any attempt to verify, by meeting with Gulf Electric, that its wages and working conditions were substandard. Further, at a meeting on March 23 attended by a representative of Gulf Coast, Gulf Electric's general superintendent, Fleming, and the union's business manager, Erickson, Fleming asked for a copy of the union's area contract so that Gulf Electric could determine how it was failing to meet area standards; Erickson never provided Fleming with this information. At the same meeting the representative of Gulf Coast offered to pay the difference between Gulf Electric's standards and the area standards; Erickson said he could not make such a commitment at that time, but would have to check with Mr. Pyles, the attorney for the union. Neither Erickson nor Pyles ever responded to Gulf Coast regarding this offer.[1]

---

[1] The trial examiner found that Pyles was an agent of the union in his actions during a phone call from Gulf Coast in which he claimed that he was unaware of this offer. On brief here, the union argues strenuously that Pyles was just the attorney for the union, not the union's agent. However, we need not decide this issue. As seen in text, the relevant actions here were the union's failures to respond to the offers of Gulf Coast and Gulf Electric. Whatever role Pyles may have played in this, it is clear that Erickson, the union's chief agent, never responded to the offers.

Finally, the picket line was suspended during one day, March 22. The trial examiner found that picketing was stopped by Erickson when he believed, based on conversations with Gulf Coast, that Gulf Coast was replacing Gulf Electric with another electrical subcontractor, a union employer which had a collective bargaining agreement with the union. The picketing resumed the next day when Gulf Coast failed to carry through with this plan.

[1] The Board concluded that the union's equivocal responses to offers aimed at meeting the union's demand for area standards, plus the union's clear and quick response to the suggestion that Gulf Electric be replaced by a union employer, indicated that the union's picketing was aimed at Gulf Coast, with the object of forcing Gulf Coast to replace Gulf Electric. The Board took the position, and

---

It may be that the sequence of the offers by Gulf Coast and Gulf Electric to "meet" the union's ostensible demands and then to hold out to the union the promise of replacing Gulf Electric with a union contractor were simply traps, aimed at forcing the union into a position where it looked as if it had an unlawful secondary object. Bargaining between employers and unions in labor disputes is often not chivalrous, and both sides need a fair degree of sophistication. Perhaps so as not to betray its naiveté, the union has not claimed the offers here were in fact bait. We note that trial examiners are often attuned to such possibilities. The trial examiner's opinion in Plumbers Local Union No. 519, etc. v. N.L.R.B., 135 U.S.App.D.C. . . ., 416 F.2d 1120 (1969), pointed out that the conduct of the employers in that case was a trap: "The thought, presumably, was that if the Union bit at the bait this would impale it as a picketer for an object of forcing Babcock [the secondary employer] to terminate Robertson [the primary employer]." The examiner thus discounted the union's agreement there to stop picketing if a union employer was hired to replace the nonunion primary employer, pointing out that the union could hardly have responded otherwise since the replacing of the primary employer would have left the union nothing to picket about (the dispute was to force the primary employer to follow area

argues here, that when such an object can be shown in a common situs picketing situation, a violation of the Act is made out despite the union's formal compliance with the *Moore Drydock* guidelines. We agree.

III.

It has been well recognized that the prohibitions of Section 8(b) (4) (i) and (ii) (B) cannot be interpreted literally; what is rather called for is fine linedrawing between primary and secondary activity. *General Electric, supra.* Further, "[i]mportant as is the distinction between legitimate 'primary activity' and banned 'secondary activity,' it does not present a glaringly bright line." *Id.*, 366 U.S. at 673, 81 S.Ct. at 1289. The Supreme Court, and this court, have made clear that the key factor is the *objective* of the union activity, whether it is aimed at the primary employer or whether it is also aimed at pressuring the secondary employer. N. L. R. B. v. International Rice Milling Co., 341 U.S. 665, 672, 71 S.Ct. 961, 95 L.Ed. 1284 (1951); Seafarers International Union v. N. L. R. B. [Salt Dome], 105 U.S. App. D.C. 211, 216, 265 F.2d 385, 590 (1959). It is thus the difficult task of the Board to examine activity which has both primary and secondary effects and to determine whether the secondary effects were truly an objective of the activity.

Given the delicacy of this task, it is obvious that the Board needs both general guidelines and a flexible approach.

standards). It is, of course, for the examiner and the Board to make the first inferences about when offers by employers in disputes of this sort are nothing more than, in the words of the examiner in *Plumbers Local Union*, "hanky-panky."

The *Moore Drydock* standards were set up as such guidelines, but as long as 1955 we noted that there could be no "rigid rule" for determining what is primary picketing and what is secondary. Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, etc. v. N. L. R. B., 97 U.S.App.D.C. 173, 176, 229 F.2d 514, 517 (1955); cert. denied, 351 U.S. 972, 76 S.Ct. 1025, 100 L.Ed. 1490 (1956). Thus in a sequel to *Sales Drivers* we held that although the union picketing appeared to square with the *Moore Drydock* requirements, the Board was correct in finding from external evidence that the picketing had the unlawful secondary object of coercing neutral employers to cease doing business with the primary employer. Truck Drivers & Helpers Local Union 728, etc. v. N. L. R. B., 101 U.S.App.D.C. 420, 249 F.2d 512 (1957), cert. denied, 355 U.S. 958, 78 S.Ct. 543, 2 L.Ed.2d 533 (1958).

[2] In other words, compliance with the *Moore Drydock* standards is "presumptive" of valid primary picketing. *General Electric*, *supra*, 366 U.S. at 677, 81 S.Ct. 1285, but the Board is not thereby relieved of carrying out its duty under the Act: determination of whether the object of the picketing is truly primary or not. The Ninth Circuit put it clearly in the recent case of N. L. R. B. v. Northern California District Council of Hod Carriers, 389 F.2d 721, 725 (1968):

> * * * *Moore Drydock* does not establish a formula whereby picketing with a secondary object can be done

The reverse is true as well. Where a union's picketing departs from the standards of *Moore Drydock*, that may be presumptive of a violation of § 8(b) (4) (i) (ii) (B), but it is open to the union (and the Board) to demonstrate that the picketing was not secondary. Plumbers Local Union No. 519, etc. v. N.L.R.B., *supra* Note 5.

lawfully. Rather it simply establishes a[n] evidentiary aid for the Board to determine the object of picketing where the other evidence is equivocal. The Board is not bound by the inference of lawfulness from compliance with the *Moore Drydock* standards. * * *"

This is the approach the Board applied to the case here. The external evidence credited by the examiner satisfied the Board that the *Moore Drydock* presumption of legality had been overcome.

IV.

The union contends that the examiner and the Board relied on evidence of the secondary *effect* of picketing to conclude that the picketing had a secondary *object*. The union argues that this is an impermissible bootstrap operation and accordingly the Board's order should be reversed or the case remanded. We agree that it would be impermissible for the Board to conclude from the secondary *effect* of picketing that it had a secondary *object*. The two must be kept separate. Otherwise all common situs picketing would be effectively outlawed, since union employees of neutral employers traditionally respect picket lines. A secondary el-

---

In this case, as in *Plumbers Local Union No. 519, supra* Note 5, the situation presented involves common situs picketing. As the Supreme Court has recently observed, the considerations are different when the picketing is at the situs of the primary employer:

"* * * [P]rotected primary picketing 'has characteristically been aimed at all those approaching the situs whose mission is selling, delivering, or otherwise contributing to the operations which the strike is endeavoring to halt.' * * * including other employers and their employees. * * *"

Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 388, 89 S.Ct. 1109, 1121, 22 L.Ed.2d 344 (1969) (quoting from United Steelworkers of America, AFL-CIO v. N.L.R.B., 376

fect is but one evidentiary factor which may shed light on the object of the actors.

The proviso in Section 8(b)(4)(i) and (ii)(B), "*Provided*, That nothing contained in this clause (B) shall be construed to make unlawful * * * primary picketing * * *," makes clear that this was not the Act's intention. We dealt with this problem at length in *Salt Dome*, *supra*:

> "* * * It is clear that, when a union pickets an employer with whom it has a dispute, it hopes, even if it does not intend, that all persons will honor the picket line, and that hope encompasses the employees of neutral employers who may in the course of their employment (deliverymen and the like) have to enter the premises. Thus some of the business relations between the two employers would automatically cease. The union knows this will be the result if, as it hopes, its picket line at the premises of the primary employer is honored. * * *"

105 U.S.App.D.C. 217, 265 F.2d at 591. We noted that such knowledge and hope on the part of the union is not a sufficient basis on which to find a violation of the Act. Rather,

---

U.S. 492, 499, 84 S.Ct. 899, 11 L.Ed.2d 863 (1964)]. Further, even in some common situs situations picketing can be explicitly aimed at secondary employees:

> "* * * It is difficult to formulate many generalizations governing common situs picketing, but it is clear that secondary employers are not necessarily protected against picketing aimed directly at their employees. In Electrical Workers v. NLRB [366 U.S. 667, 81 S.Ct. 1285, 6 L.Ed.2d 59 (1961)], for example, we noted that striking employees could picket at a gate on the struck employer's premises which was reserved exclusively for employees of the secondary employer, to induce those employees to refuse to perform work for their employer which was connected with the struck employer's normal business operations. * * *"

Id. at 389.

the Board must resort to other means to determine whether the union had a secondary object. One way would be to see whether there was substantial variance with the *Moore Dry-dock* standards; another, as described in Part II, *supra*, is to determine from external actions or statements what the object of the union is. Although it may sometimes be difficult, the Board must confine itself to these means.

It is, of course, somewhat naive to expect anyone to delineate with precision the philosophical difference between a man's hope and his desire, or the psychological difference between a man's informed wish and his intent. Pushed to

---

In Local 761, Int. U. of Electrical etc. Workers v. N.L.R.B., 366 U.S. 667, 673, 81 S.Ct. 1285 (1961), the Supreme Court quoted from this court's opinion in *Salt Dome* (Seafarers' Int. U. v. N.L.R.B., 105 U.S.App. D.C. 211, 265 F.2d 585 (1959)). The Court approved our language regarding the difference between knowledge and hope on the one hand and object on the other. The Court also quoted from N.L.R.B. v. Local 294, Int. Brotherhood of Teamsters, 2 Cir., 284 F.2d 887, 890 (1960):

> " 'Almost all picketing, even at the situs of the primary employer and surely at that of the secondary, hopes to achieve the forbidden objective, whatever other motives there may be and however small the chances of success.' "

366 U.S. at 673, 81 S.Ct. at 1289. The Supreme Court went on to say:

> "But picketing which induces secondary employees to respect a picket line is not the equivalent of picketing which has an object of inducing those employees to engage in concerted conduct against their employer in order to force him to refuse to deal with the struck [primary] employer. * * *
>
> "However difficult the drawing of lines more nice than obvious, the statute compels the task. * * *"

Id. at 673-674, 81 S.Ct. at 1290.

"No cosmic principles announce the existence of secondary conduct, condemn it as an evil, or delimit its boundaries. These tasks were first undertaken by judges, intermixing metaphysics with their notions of social and economic policy. And the common law of labor relations has created no concept more elusive than that of 'secondary' conduct; it has drawn no lines more arbitrary, tenuous, and shifting

the extreme, the whole notion of distinguishing between primary and secondary activity runs up against the premise of the law that a man intends the known and probable consequences of his actions. If this principle were applied in determining Section 8(b)(4)(i) and (ii)(B) violations, the Act's attempt to distinguish between primary and secondary activity would abort.

Fortunately for the courts, our task is simply to let the Board first divine these distinctions, and to give the Board great weight in inferring, or not inferring, motive and intent from actions. It is not simply cowardice which impels the courts to take this distant role. Given the tenuous philosophical underpinnings of this aspect of the law, it is apparent that the judgment of what is primary and what is secondary is a pragmatic one, based on an overall impression of the parties' actions and an understanding of their relevant strengths and interests. And this type of pragmatic judgment is best made by the agency which views the battle at first hand.

[3] In this case we disagree with the union that the Board or the examiner simply relied on the evidence of secondary effect and concluded from it that the union had an impermissible object. Rather, although its opinion might have been clearer on this point, we think that this evidence was only used to note that the union's picketing had the predictable secondary consequences, *i.e.*, that neutral employees did respect it. The examiner and the Board did not

---

than those separating "primary" from "secondary" activities. * * *" *Jacksonville Terminal Co., supra* Note 7, 394 U.S. at 386-387, 89 S.Ct. at 1120.

stop there; they went on, using the external evidence described above, to show that the union's object was, in fact, secondary. The picketing, which had both a secondary object and a secondary effect, was then held to violate the Act.

Petition for review denied and cross-petition for enforcement granted.

APPENDIX C.

EXCERPTS FROM INSTRUCTIONS TO JURY.

GULF COAST BUILDING & SUPPLY COMPANY, INC.,

Plaintiff,

versus

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 480, AFL-CIO,

Defendant.

Local Number 480 was under a duty to expressly instruct employees and suppliers of Gulf Coast Building and Supply Company, Inc., Wood Mechanical Contractors, and Natchez Sand and Gravel Company, that they were free to cross the picket line at Tracetown.

Local Number 480, that's the defendant, was under a duty to instruct employees and suppliers of Gulf Coast Building and Supply Company, the plaintiff, who had ceased work and who refused to cross their picket lines as a result of Local 480's picketing, to return to work and cross such picket line without violating any duty to said labor union.

You are instructed as a matter of law that even though defendant's picketing was peaceful and even though its objective or purpose were lawful, still if an incidental, and inescapable, and undeniable purpose, result and effect of

the method employed by the union were to induce or force plaintiff's employees and suppliers not to cross the union's picket line to serve plaintiff because of a labor dispute of the union with one of plaintiff's subcontractors, Gulf Electric, then the defendant union would be liable to the plaintiff in damages therefor. (R. 481.)

* * *

In order to prove plaintiff's claim the burden is on the plaintiff to establish by a preponderance of the evidence in the case the following facts: First, that at or about the time and place alleged, defendant union knowingly induced and encouraged one or more employees of Gulf Coast Building and Supply Company, Inc., Wood Mechanical Contractors or Delta Steel Company to cease work or to cease to perform services for the plaintiff. Second, that defendant union so induced and encouraged such employee or employees of Gulf Coast Building and Supply Company, Inc., Wood Mechanical Contractors and Delta Steel Company to cease work, or to refuse to perform services with the object or purpose or intent to force or require Wood Mechanical Contractors and Delta Steel Company to cease doing (R. 482) business with the plaintiff. Third, that such acts and conduct of defendant union were a proximate cause of some injury and consequent damage to the business and property of the plaintiff.

There are four standards for picketing in common situs situations which are presumptive of valid primary activity: One, that the picketing by IBEW Local 480 was at all times limited to the times when the situs of the dispute was located

on the secondary premises, that is the Tracetown project in Natchez. Two, that Gulf Electric was engaged in its normal business at the situs, that is at Tracetown project. Three, that picketing took place reasonable (sic) close to the situs. Four, that the picketing clearly disclosed that the dispute was only with Gulf Electric.

If your unanimous findings to each of the four standards are in the affirmative, then you may indulge a presumption of valid primary activity on the part of IBEW Local 480, the defendant, in its picketing of Gulf Electric. It then becomes the duty of the plaintiff to prove by a preponderance of the evidence that the actions as well as the objective of IBEW Local 480 was unlawful and invalid.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or other such reason.

The factual issues to be determined by the jury in this case are did defendant, IBEW Local 480, during the period (R. 483) between February 28, 1967, and June 23, 1967, at the Tracetown project in Natchez, Mississippi, knowingly induce or encourage one or more employees or suppliers of or subcontractors of Gulf Coast Building and Supply Company to cease work, strike, and refuse, in the course of their employment, to perform service for said employer.

If your unanimous answer to this question is "no" you should return a verdict in favor of IBEW Local 480, the defendant.

However, if your unanimous answer to the question is yes then you must determine a second issue. Did Local 480 so induce or encourage such employee or employees or suppliers or subcontractors of the above named employers to cease work, or to refuse to perform services with the object or purpose or intent to require or force Gulf Coast Building Supply Company, Inc., to cease doing business with Gulf Electric Construction Company, Inc., and with the further object and purpose and intent to require or force Wood Mechanical Contractors and Delta Steel Company to cease doing business with Gulf Coast Building and Supply Company, Inc.

If your unanimous answer to the second question is no you should return a verdict in favor of defendant IBEW Local 480, but if your unanimous answer is yes you should return a verdict for the plaintiff employer for such actual damages to the plaintiff's business as you shall find has been proximately caused (R. 484) by any such unlawful conduct of the defendant IBEW Local Number 480. (R. 485.)

* * *

The key factor in this case is the objective of the union's activity, that is whether the picketing was aimed at Gulf Electric or whether the picketing was intended to pressure the plaintiff, Gulf Coast Building and Supply Company, into ceasing to do business with Gulf Electric, and whether the picketing was intended to pressure Wood Mechanical Contractors and Delta Steel Company to cease doing business with the plaintiff in order to require Gulf Coast Build-

ing and Supply Company to cease doing business with Gulf Electric. (R. 487.)

* * *